

United States  
Circuit Court of Appeals

For the Ninth Circuit.

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CITY OF SEATTLE, a Municipal Corporation,  
Plaintiff in Error,  
vs.

LLOYDS PLATE GLASS INSURANCE COM-  
PANY, a Corporation,  
Defendant in Error.

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Transcript of Record.

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Upon Writ of Error to the United States District Court for the  
Western District of Washington, Northern Division.

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FILED

FEB 2 - 1918

F. D. MONCKTON,  
CLERK.



**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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*United States District Court, Western District of  
Washington, Northern Division.*

No. 3561.

LLOYDS PLATE GLASS INSURANCE COM-  
PANY, a Corporation,

Plaintiff,

vs.

THE CITY OF SEATTLE, a Municipal Corpora-  
tion,

Defendant.

**Names and Addresses of Counsel.**

HUGH M. CALDWELL, Esq., Corporation Coun-  
sel, Attorney for Plaintiff in Error, 527 King  
County Court House, Seattle, Washington.

FRANK S. GRIFFITH, Esq., Assistant Corpora-  
tion Counsel, Attorney for Plaintiff in Error,  
King County Court House, Seattle, Washington.

Messrs. BOGLE, GRAVES, MERRITT & BOGLE,  
Attorneys for Defendant in Error, 609 Central  
Building, Seattle, Washington.

Messrs. FLICK & PAUL, Attorneys for Defendant  
in Error, 915 Hoge Building, Seattle Washing-  
ton.

Messrs. HUGHES, McMICKEN, RAMSEY &  
RUPP, Attorneys for Defendant in Error 915  
Hoge Building, Seattle, Washington. [1\*]

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\*Page-number appearing at foot of page of original certified Transcript  
of Record.

*United States District Court, Western District of  
Washington, Northern Division.*

No. 3561.

LLOYDS PLATE GLASS INSURANCE COM-  
PANY, a Corporation,

Plaintiff,

vs.

THE CITY OF SEATTLE,

Defendant.

**Amended Complaint.**

Comes now Lloyds Plate Glass Insurance Com-  
pany, by its attorneys, Flick & Paul, Bogle, Graves,  
Merritt & Bogle, and Hughes, McMicken, Dovell &  
Ramsey, and for cause of action against the defend-  
ant, the City of Seattle, complains and alleges as  
follows:

I.

That the plaintiff is now, was at all times herein-  
after mentioned, and for more than one year last  
past has been, a corporation organized and existing  
under the laws of the State of New York, with its  
residence and principal place of business at 63 Will-  
iam Street in the City of New York in said state,  
and is a citizen and resident of said state, and quali-  
fied, licensed and authorized to do business as an in-  
surance company in the State of Washington, hav-  
ing complied with all the requirements thereof re-  
lating to foreign insurance companies carrying on  
business in said state and having designated, ap-

pointed and maintained, during all of said time an agent, resident in the City of Seattle, county of King, in said state, and having paid its annual license fee last due. [2]

## II.

That the Globe Indemnity Company is now, was at all times hereinafter mentioned, and for more than one year last past has been, a corporation organized and existing under the laws of the State of New York, with its residence and principal place of business at 45 William Street in the city of New York in said state, and is a citizen and resident of said state, and qualified, licensed and authorized to do business as an insurance company in the State of Washington, having complied with all the requirements thereof relating to foreign insurance companies carrying on business in said state and having designated, appointed and maintained, during all of said time an agent, resident in the City of Seattle, county of King, in said state, and having paid its annual license fee last due.

## III.

That the defendant, the City of Seattle, is now and at all times mentioned herein was a municipal corporation of the first class, organized, created and existing under and by virtue of the laws of the State of Washington, located in the county of King, in the Northern Division of the Western District of Washington.

## IV.

That prior to May 30, 1915, and up to and including said date, each of the persons, firms and corpo-

rations named in the schedule hereto attached, marked Exhibit "A" and hereby made a part of this complaint, being then the owners respectively of the glass windows, doors or transoms located in the city of Seattle, at the places in said exhibit designated by street numbers after the names of such persons, [3] obtained from the plaintiff, in consideration of the payment of its established premiums, plaintiff's policies of insurance a specimen copy of which is attached hereto, marked Exhibit "D" and made a part hereof, insuring said owners against loss by breakage of said glass in a sum aggregating the amount set forth after each of said names, and said policies and each of them were in full force and effect upon and including May 30th, 1915.

#### V.

That prior to May 30, 1915, and up to and including said date, each of the persons, firms and corporations named in the schedule hereto attached, marked Exhibit "B" and hereby made a part of this complaint, being then the owners respectively of the glass windows, doors or transoms located in the city of Seattle, at the places in said exhibit designated by street numbers after the names of such persons, obtained from the Globe Indemnity Company, in consideration of the payment of its established premiums, the Globe Indemnity Company's policies of insurance, a specimen copy of which is attached hereto, marked Exhibit "E" and made a part hereof, insuring said owners against loss by breakage of said glass in a sum aggregating the amount set forth after each of said names, and said policies and each thereof

were in full force and effect upon and including May 30, 1915.

## VI.

That upon the 6th day of November, 1911, the Council of the City of Seattle passed an Ordinance, No. 28,324, the title of said ordinance being as follows:

## VI.

“AN ORDINANCE for limiting fire hazard in the City of Seattle, having reference to buildings, [4] their inspection, alteration, hazardous use, safety appliances and protection from fire and explosion; and as incident thereto, creating a Fire Patrol System in the Fire Department, prescribing the powers and duties of certain officers and other persons in relation thereto and with reference to fire protective measures; regulating the handling, transportation, storage, sale and use of explosives, fire works, dangerous chemicals, petroleum, kerosene, turpentine, and other inflammable liquids, oils and materials; regulating the burning and disposition of rubbish and refuse; prohibiting tampering with the Fire Alarm System and City poles; prohibiting the impersonation of firemen; regulating traffic during fires; allowing appeals licenses and permits and providing penalties for the violation of this Ordinance.”

That said ordinance was approved by the mayor of said city November 7, 1911, to take effect thirty days after approval, and since that date has been and



at all times herein mentioned was, a valid and subsisting ordinance of said city. That said ordinance is hereby referred to and made a part hereof with the same force and effect as if particularly set forth.

## VII.

That upon the first day of March, 1915, the Council of the city of Seattle passed Ordinance No. 34,379, entitled:

“AN ORDINANCE establishing rules and regulations for the government and control of the navigable waters under the jurisdiction and control of the City of Seattle, establishing and prescribing the powers and duties of the port warden and other officials and employees of the City relating thereto, providing penalties for violation of the provisions hereof, and repealing Ordinance No. 31,368, entitled ‘An Ordinance relating to and providing rules and regulations for the government, control and use of the harbor, wharves and slips of and in the City of Seattle, providing penalties for violations thereof and repealing all ordinances or parts thereof in conflict herewith,’ approved May 27, 1913, and all other ordinances in so far as they may be in conflict.”

That said ordinance was approved by the mayor of said city, March 3, 1915, filed with the city clerk, March 3, 1915, published March 12, 1915, and since that date has been, and at all times mentioned herein, was a valid and subsisting [5] ordinance of said city.

That said ordinance is hereby referred to and made

a part hereof with the same force and effect as if particularly set forth.

### VIII.

That buoy Number 1 is a buoy owned and maintained by the city of Seattle and under the supervision and control of the said city of Seattle and of the port warden of the said city, being located within that part of Seattle harbor known and designated as Elliott Bay Anchorage, within the city limits of said city.

That said buoy Number 1 is now and was at all times herein mentioned, located at a point near which ships and vessels were anchored and constantly passed in the ordinary course of travel and within 200 feet of the northern end of Harbor Island, upon the shore of which, prior to the first day of June, 1915, houses and dwellings were located; that said buoy is within a half mile of a part of the City of Seattle, where large numbers of people work and congregate, and where many mills, piers and docks are located, and within a mile of the downtown business and residential section of said city.

### IX.

That on or about the 14th day of May, 1915, the port warden of the City of Seattle, together with other duly authorized and acting agents of the Harbor Department of said city, acting for and on behalf of said city, and at the instance of the Lillico Launch & Tow Boat Company, charterers of a certain scow, and agents of the owners of its cargo, directed that said scow containing 1415 cases of 90% nitro-glycerin content gelatin and 207 cases of 80% nitro-glycerin

content gelatin, [6] aggregating about 15 or 16 tons in weight, be tied up and moored to the said buoy No. 1; that the said port warden and said officers and agents knew that said scow contained high explosives, but nevertheless issued a permit therefor, and also did not require a bond or compel the said scow to be placarded and watched as provided by Ordinances Nos. 28,324 and 34,379, hereinbefore referred to; that thereafter and upon the 28th day of May, 1915, the said port warden and said officers and agents directed that a barge containing coal be removed from city buoy No. 2, and that the said barge be tied up and moored to buoy No. 1, though the said scow of nitro-glycerin was already attached to the said buoy, and that the said coal barge remained at said buoy up to, and including, the 30th day of May, 1915.

#### X.

That the said scow of nitro-glycerin was permitted to be moored to buoy No. 1 in Seattle Harbor by the port warden of the City of Seattle and other agents of the Harbor Department of said city, acting for and on behalf of said city, in consideration of revenue to be derived by the said city in the way of fees in accordance with a schedule for the mooring of vessels at city buoys, and that said fees were demanded by and paid to the said officers by the Lillico Launch & Tow Boat Company, the charterers of the said scow, and the said permission granted therefor.

#### XI.

That the said scow, by and under the direction of the port warden of the City of Seattle, and through duly authorized and acting agents of the Harbor De-



partment of said city acting on behalf of said city, was kept, stored and maintained, and so [7] remained in storage at the said buoy from the 14th day of May, 1915, until 2:00 A. M. upon the 30th day of May, 1915, when the nitro-glycerin therein contained, by reason of some cause or causes unknown to the plaintiff, and without any fault on its part, or on the part of the said Globe Indemnity Company, or on the part of any of the holders of the policies of insurance as set out in Exhibits "A" and "B" hereto attached, exploded with such violence as to break the glass and other structures covered by the said policies described in Exhibits "A" and "B," and the same were thereby broken and lost, and the plaintiff and the said Globe Indemnity Company were thereby rendered liable upon their several policies of insurance in the amounts and to the persons set forth in said exhibits.

## XII.

That by reason of the acts and omissions of the port warden of the City of Seattle and other duly authorized and acting agents of the Harbor Department of said city, acting for and on behalf of said city, in keeping and maintaining the said scow of nitro-glycerin in and under the circumstances and conditions and in the manner hereinbefore set out and in violation of Ordinances Nos. 28,324 and 34,379 above referred to, a public and private nuisance was created and maintained, and that said nuisance so created and maintained was the proximate cause of the injury sustained by the policy-holders of the plaintiff herein, and of the said Globe Indemnity

Company, to whose rights the plaintiff and said Globe Indemnity Company, are subrogated as hereinafter set out. [8]

### XIII.

That the acts and omissions of the port warden of the City of Seattle and other duly authorized and acting agents of the Harbor Department of said city, acting for and on behalf of said city, in keeping and maintaining the said scow of nitro-glycerin in and under the circumstances and conditions and in the manner hereinbefore set out and in violation of Ordinances Nos. 28,324 and 34,379 above referred to, rendering the said scow dangerous to the life, property and safety of the residents of said city, and particularly the policy-holders schedules in Exhibits "A" and "B," were negligent and careless and that said negligence and carelessness was the proximate cause of the injury sustained by the policy-holders of the plaintiff herein, and the said Globe Indemnity Company, to whose rights the plaintiff and said Globe Indemnity Company are subrogated as hereinafter set out.

### XIV.

That said loss and damage was not brought about by reason of any peril or cause excepted by said policies of insurance and does not exceed the amount of the policies upon which the plaintiff and said Globe Indemnity Company are severally liable, and, as required and provided by its said policies, the plaintiff and the said Globe Indemnity Company have discharged their said liability by the payment of the value of the glass so broken and lost, or re-

moving and replacing same, less salvage; and each of the said policy-holders has heretofore by written instrument duly executed and delivered, sold, assigned and set over, all his right, title and interest in and to the claim or cause of action against said City of Seattle, in any wise arising or growing out of said explosion and the loss and damage thereby sustained, and thereby and by the provisions of said policies, [9] the plaintiff and said Globe Indemnity Company have been subrogated to the rights and claims of their said policy-holders, and each of them, in the premises.

XV.

That by reason of the acts and omissions of the port warden of the City of Seattle and other officers and agents of said city, as aforesaid, the plaintiff Lloyds Plate Glass Insurance Company, has been damaged in a total of the sums which it has paid in accordance with the terms of its said policies as set forth in Exhibit "A," to wit, in the sum of \$5,749.43.

XVI.

That by reason of the acts and omissions of the port warden of the City of Seattle and other officers and agents of said city, as aforesaid, said Globe Indemnity Company has been damaged in a total of the sums which it has paid in accordance with the terms of its said policies as set forth in Exhibit "B," to wit, in the sum of \$2,406.88.

XVII.

That upon the 19th day of February, 1917, the said Globe Indemnity Company, under a contract, copy of which is hereto attached and marked Exhibit

“C,” and made a part hereof, set over, transferred and assigned to the plaintiff herein all its right and interest in, to and under those certain policies set out in Exhibit “B,” hereof, and all claims for damages against the defendant accruing to the said Globe Indemnity Company under said policies by right of subrogation or otherwise.

#### XVIII.

That the plaintiff and the said Globe Indemnity Company upon the 29th day of June, 1915, filed with the clerk of the [10] City Council of the City of Seattle, duly verified claims for the injuries herein set out, copies of which are attached hereto marked Exhibits “F” and “G” and made a part hereof, and that said claims were passed upon and rejected by the city council of said city upon the 26th day of July, 1915, and the said city and its agents have wholly failed, neglected and refused to reimburse the plaintiff or the Globe Indemnity Company, or their policy-holders, for any part of the damage herein set out.

#### XIX.

That the amount in controversy in this action exceeds the sum of \$3,000.00, exclusive of interests and costs, and that the premises are within the jurisdiction of this Honorable Court.

WHEREFORE, the plaintiff prays judgment against the defendant, the City of Seattle, in the amount of Eight Thousand One Hundred Fifty-six

and 31/100 Dollars (\$8,156.31), and for its costs and disbursements herein.

FLICK & PAUL,

Attorneys for Plaintiff.

BOGLE, GRAVES, MERRITT & BOGLE,

Attorneys for Plaintiff.

HUGHES, McMICKEN, DOVELL & RAM-  
SEY,

Attorneys for Plaintiff.

State of Washington,  
County of King,—ss.

Lee D. Gilmer, being duly sworn on his oath, deposes and says:

That the above-named plaintiff, Lloyds Plate Glass Insurance Company, is a corporation organized under the laws of the State of New York, and has no officer within the State of Washington; that Shay Bros. and Gilmer is a corporation organized and existing under the laws of the State of Washington, and affiant is an officer thereof, to wit, its treasurer and secretary. That the said Shay Bros. and Gilmer, a corporation [11] is the duly appointed, qualified and acting agent of the said Lloyds Plate Glass Insurance Company in the State of Washington, and is authorized to verify the foregoing amended complaint upon behalf of said plaintiff. Affiant has read the said foregoing amended complaint, including the exhibits therein referred to and thereto attached, knows the contents thereof and the same is true as he verily believes. That all the material facts therein set forth are within the personal knowledge of affiant and he makes this affidavit as



the act of Shay Bros. and Gilmer upon behalf of said plaintiff and for the reasons above set out.

LEE D. GILMER.

Subscribed and sworn to before me this 25th day of May, 1917.

[Seal]

CHARLES H. PAUL,  
Notary Public in and for the State of Washington,  
Residing at Seattle.

Copy of within received May 25, 1917.

HUGH M. CALDWELL,  
Corporation Counsel.

[Endorsed]: Amended Complaint. (Exhibits omitted, see Stipulation *in re* Clerk's Copy and Printing.) Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. May 29, 1917. Frank L. Crosby, Clerk. [12]

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*United States District Court, Western District of  
Washington, Northern Division.*

No. 3561.

LLOYDS PLATE GLASS INSURANCE COM-  
PANY, a Corporation,

Plaintiff,

vs.

THE CITY OF SEATTLE,

Defendant.

**Demurrer to Amended Complaint.**

Comes now the defendant and demurs to the

amended complaint of the plaintiff, and for cause of demurrer alleges:

I.

That the Court has neither jurisdiction of the person or of the subject matter of this action.

II.

That there is a defect of parties plaintiff.

III.

That several causes of action have been improperly united.

IV.

That the amended complaint does not state facts sufficient to constitute a cause of action, or to entitle the plaintiff to any relief whatsoever.

HUGH M. CALDWELL,  
Corporation Counsel.

FRANK S. GRIFFITH,  
Assistant,  
Attorneys for Defendant.

Service of the within Demurrer by delivery of a copy to the undersigned is hereby acknowledged this — day of June, 1917.

FLICK & PAUL,  
Attorneys for Plaintiff.

[Endorsed]: Demurrer to Amended Complaint.  
Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, June 9, 1917.  
Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.  
[13]

*United States District Court, Western District of  
Washington, Northern Division.*

No. 3561.

LLOYDS PLATE GLASS INSURANCE COM-  
PANY, a Corporation,

Plaintiff,

vs.

THE CITY OF SEATTLE, a Municipal Corporation,  
Defendant.

**Order Overruling Demurrer to Complaint.**

This cause having come on to be heard upon defendant's demurrer to the complaint and having been argued by counsel; and the Court having heretofore filed its memorandum decision sustaining said demurrer, whereupon a petition for rehearing was presented on behalf of the plaintiff, and said petition having been granted; upon consideration thereof and of the briefs filed and authorities cited by the respective parties, it is ordered and adjudged that said demurrer be and it is hereby overruled.

Defendant excepts and an exception is allowed.

Done in open Court this 10th day of September, 1917.

JEREMIAH NETERER,

Judge.

[Endorsed]: Order Overruling Demurrer to Complaint. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Sep. 10,



1917. Frank L. Crosby, Clerk. By Ed M. Lakin,  
Deputy. [14]

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*United States District Court, Western District of  
Washington, Northern Division.*

No. 3561.

LLOYDS PLATE GLASS INSURANCE COM-  
PANY, a Corporation,

Plaintiff,

vs.

THE CITY OF SEATTLE,

Defendant.

**Answer to Amended Complaint.**

Comes now the defendant, the City of Seattle, and  
for answer to the amended complaint of plaintiff  
herein, admits, denies and alleges as follows:

**I.**

That it has no knowledge or information sufficient  
to form a belief as to any of the allegations contained  
in paragraphs I and II of the amended complaint,  
and therefore denies each and all of the allegations  
contained in each of said paragraphs.

**II.**

It denies the allegations of paragraph III.

**III.**

It denies each and every of the allegations con-  
tained in paragraph IV.

## IV.

It denies each and every allegation contained in paragraph V.

## V.

It admits the allegations contained in paragraph VI.

## VI.

It admits the allegations of paragraph VII. [15]

## VII.

Denies each and every allegation contained in paragraph VIII.

## VIII.

Denies each and every allegation contained in paragraph IX.

## IX.

Denies each and every allegation contained in paragraph X.

## X.

Denies each and every allegation contained in paragraph XI, including the exhibits attached and made a part of said paragraph.

## XI.

Denies each and every allegation contained in paragraph XII.

## XII.

Denies each and every allegation contained in paragraph XIII, including the exhibits made a part of said paragraph.

## XIII.

Denies each and every allegation contained in paragraph XIV.

XIV.

Denies each and every part of each and every allegation contained in paragraph XV, including each and every part of the exhibit therein mentioned.

XV.

Denies each and every part of each and every allegation contained in paragraph XVI, including each and every part of the exhibit therein mentioned.

[16]

XVI.

It denies each and every part of each and every allegation contained in paragraph XVII, including each and every part of the exhibits therein mentioned.

XVII.

It denies each and every allegation contained in paragraph XVIII, including the exhibits therein mentioned.

XVIII.

It denies each and every part of each and every allegation contained in paragraph XIX.

FIRST AFFIRMATIVE DEFENSE.

And for a first, further and affirmative defense, this defendant alleges:

1. That the City of Seattle is a municipal corporation of the first class, in the State of Washington, being in the Northern Division of the Western District.

2. That in 1896, the City of Seattle, under authority of the legislature of the State of Washington, adopted what is known as the Freeholders Charter;

that by Article XII there was created the "Harbor Department," by the terms of which it provided that the city council shall, unless otherwise prescribed by the laws of the State, exercise control and management of the harbor and waterfront of the City of Seattle, and shall, by ordinance, establish such rules and regulations as shall prevent any encroachment upon the tidal area of the same; and regulate tolls for wharfage, dockage, and other charges at all wharves, slips, docks and landing places within the city, and provide for the regulation of berths and landing of all steamers, sail vessels, barges or other water craft, and shall exercise in regard to all such wharves, slips, docks and landing places such other control as shall not be inconsistent with [17] the laws of the United States and of the State of Washington, and provides for a port warden who shall perform such duties not inconsistent with this charter as may be prescribed by ordinance.

3. That the State of Washington has at no time enacted any legislation requiring the City of Seattle to do or perform any act or acts in reference to buoys or to the landing of vessels or the care of the navigable waters in front of the City of Seattle.

4. That under the charter provision above referred to, the City of Seattle has no authority to construct, maintain or operate any buoy or buoys within the navigable waters in front of the City of Seattle.

5. That the City of Seattle has no authority to regulate or control the commerce of the United States or of the State of Washington, or of foreign countries coming into the harbor of Seattle.

## SECOND AFFIRMATIVE DEFENSE.

For a further, second and affirmative defense, this defendant alleges:

1. That the City of Seattle is a municipal corporation of the first class, in the State of Washington.

2. That the charter provides for the appointment of a port warden whose duties are defined and prescribed by the provisions set forth in the first affirmative defense.

3. That the City of Seattle, in establishing a buoy in the navigable waters of Elliott Bay, and the harbor-master, in the management and control of said buoy, including the permitting of vessels to moor thereat, was without any authority and without the power of the City of Seattle or the port warden, and the acts and doings of the City of Seattle and its port warden were *ultra vires*. [18]

## THIRD AFFIRMATIVE DEFENSE.

For a third, further and affirmative defense, defendant alleges:

1. That if the plaintiff suffered any injury or damage by reason of the acts complained of in its complaint, as far as the City of Seattle is concerned they are *damnum absque injuria*.

WHEREFORE, plaintiff, having fully answered, prays that it may go hence without day and recover its costs.

HUGH M. CALDWELL,  
Corporation Counsel.  
FRANK GRIFFITH,  
Assistant,  
Attorneys for Defendant.

State of Washington,  
County of King,—ss.

H. C. Gill, being first duly sworn, on oath, says: That he is mayor of the City of Seattle, the defendant named in the foregoing answer; that he has heard the same read, knows the contents thereof, and believes the same to be true.

H. C. GILL.

Subscribed and sworn to before me this 25th day of September, 1917.

W. D. COVINGTON,  
Notary Public in and for the State of Washington,  
Residing at Seattle, Washington.

Service admitted this 25th day of Sept., 1917.

BOGLE, GRAVES, MERRITT & BOGLE,  
HUGHES, McMICKEN, RAMSEY & RUPP,  
FLICK & PAUL,  
Attorneys for Plaintiff.

[Endorsed]: Answer to Amended Complaint.  
Filed in the U. S. District Court, Western Dist. of  
Washington, Northern Division. Sep. 25, 1917.  
Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.  
[19]



*In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

No. 3561.

LLOYDS PLATE GLASS INSURANCE COM-  
PANY, a Corporation,

Plaintiff,

vs.

THE CITY OF SEATTLE, Municipal Corporation,  
Defendant.

**Demurrer to Affirmative Defenses.**

**I.**

Comes now the plaintiff above named and demurs to the first affirmative defense set forth in defendant's answer to the amended complaint herein, upon the ground and for the reason that said affirmative defense does not state facts sufficient to constitute a defense to the cause of action set forth in plaintiff's amended complaint.

**II.**

Demurs to the second affirmative defense set forth in defendant's said answer, upon the ground and for the reason that said affirmative defense does not state facts sufficient to constitute a defense to the cause of action set forth in plaintiff's amended complaint.

**III.**

Demurs to the third affirmative defense set forth in defendant's said answer, upon the ground and for the reason that said affirmative defense does not state

facts sufficient [20] to constitute a defense to the cause of action set forth in plaintiff's amended complaint.

FLICK & PAUL,  
BOGLE, GRAVES, MERRITT & BOGLE,  
HUGHES, McMICKEN, RAMSEY &  
RUPP,

Attorneys for Plaintiff.

Copy of within Demurrers received and due service of same acknowledged this 25th day of October, 1917.

HUGH M. CALDWELL,  
Corporation Counsel,  
Attorney for Defendant.

[Endorsed]: Demurrer to Affirmative Defenses. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Nov. 3, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [21]

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*United States District Court, Western District of  
Washington, Northern Division.*

No. 3561.

LLOYDS PLATE GLASS INSURANCE COM-  
PANY, a Corporation,

Plaintiff,

vs.

THE CITY OF SEATTLE,

Defendant.



**Reply.**

Comes now Lloyds Plate Glass Insurance Company, a corporation, plaintiff herein, by its attorneys, and waives its demurrer to the answer of the defendant, heretofore filed herein, for the purpose of this reply, but reserving the right to question the sufficiency of the defendant's answer at the time of the trial, and replies to the answer of the defendant herein, admitting, denying and alleging, as follows:

I.

For answer to paragraphs I, II and III of defendant's first affirmative defense, plaintiff admits the same.

II.

For answer to paragraph IV of defendant's first affirmative defense, plaintiff denies each and every allegation therein contained.

III.

For answer to paragraph V of defendant's first affirmative defense, plaintiff denies each and every allegation therein contained. [22]

IV.

For answer to paragraphs I and II of defendant's second affirmative defense, plaintiff admits the same.

V.

For answer to paragraph III of defendant's second affirmative defense, plaintiff denies each and every allegation therein contained.

VI.

For answer to paragraph I of defendant's third

affirmative defense, plaintiff denies each and every allegation therein contained.

WHEREFORE, plaintiff prays for judgment according to its complaint.

FLICK & PAUL,  
Attorneys for Plaintiff.

BOGLE, GRAVES, MERRITT & BOGLE,  
Attorneys for Plaintiff.

HUGHES, McMICKEN, RAMSEY & RUPP,  
Attorneys for Plaintiff. [23]

State of Washington,  
County of King,—ss.

Lee D. Gilmer, being duly sworn, on his oath deposes and says:

That the above-named plaintiff, Lloyds Plate Glass Insurance Company, is a corporation organized under the laws of the State of New York and has no officer within the State of Washington; that Shay Bros. and Gilmer is a corporation organized and existing under the laws of the State of Washington and affiant is an officer thereof, to wit, its treasurer and secretary. That the said Shay Bros. and Gilmer, a corporation, is the duly appointed, qualified and acting agent of the said Lloyds Plate Glass Insurance Company in the State of Washington and is authorized to verify the foregoing reply upon behalf of said plaintiff. Affiant has read the said foregoing reply, knows the contents thereof, and believes the same to be true, and he makes this affidavit as the act of Shay Bros. and Gilmer upon be-

half of said plaintiff and for the reasons above set out.

LEE D. GILMER.

Subscribed and sworn to before me this 23d day of November, 1917.

[Seal] MAURICE R. McMICKEN,  
Notary Public in and for the State of Washington,  
Residing at Seattle.

Copy of within received Nov. 22, 1917.

HUGH M. CALDWELL,  
Corporation Counsel.

[Endorsed]: Reply. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Nov. 30, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [24]

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*In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

No. 3561.

LLOYDS PLATE GLASS INSURANCE COM-  
PANY, a Corporation,

Plaintiff,

vs.

THE CITY OF SEATTLE, a Municipal Corpora-  
tion,

Defendant.

**General Finding.**

The Court in the above-entitled cause finds for the plaintiff in the sum of Eight Thousand One Hundred Fifty-six and 31/100 Dollars (\$8,156.31).

Defendant excepts to all the foregoing finding and its exception is allowed.

Done in open court this 10th day of January, 1918.

EDWARD E. CUSHMAN,

Judge.

Copy of within General Finding of Fact received, and due service of same acknowledged this 10th day of January, 1918.

HUGHES, McMICKEN, RAMSEY,  
RUPP,

Of Attorneys for Plaintiff.

[Endorsed]: General Finding. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Jan. 10, 1918. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [25]

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*In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

No. 3561.

LLOYDS PLATE GLASS INSURANCE COM-  
PANY, a Corporation,

Plaintiff,

vs.

THE CITY OF SEATTLE, a Municipal Corpora-  
tion,

Defendant.

### **Judgment.**

This cause having come on regularly for trial before the Court upon the issues of fact raised by the pleadings, the stipulation in writing by the parties having been therefore filed in said cause waiving a jury, plaintiff appearing by E. C. Luccock of Bogle, Graves, Merritt & Bogle, and E. H. Flick of Flick & Paul, and Otto B. Rupp of Hughes, McMicken, Ramsey & Rupp, its attorneys, and the defendant appearing by Hugh M. Caldwell and Frank S. Griffith, its attorneys; trial thereof having proceeded with the introduction of evidence on behalf of the respective parties, the parties having rested and the Court having heard the argument of counsel; thereupon the Court duly considering the evidence and the law applicable thereto and being fully advised in the premises, and the Court having found the issue for the plaintiff in the sum of \$8,156.31:

Now, therefore, upon motion of the plaintiff, the Court being fully advised in the premises, it is **CONSIDERED, ORDERED AND ADJUDGED** that Lloyds Plate Glass Insurance Company, a corporation, above-named plaintiff, do have and recover of and from the City of Seattle, a municipal corporation, the [26] above-named defendant, the sum of Eight Thousand One Hundred Fifty-six and 31/100 Dollars (\$8,156.31), and its costs and disbursements herein taxed, the sum of Seventy and 10/100 Dollars.

Done in open court this 10th day of January, 1918,  
EDWARD E. CUSHMAN,  
Judge.

[Endorsed]: Judgment. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Jan. 10, 1918. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [27]

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*In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

No. 3561.

LLOYDS PLATE GLASS INSURANCE COM-  
PANY, a Corporation,

Plaintiff,

vs.

THE CITY OF SEATTLE, a Municipal Corpora-  
tion,

Defendant.

**Motion for New Trial.**

Comes now the City of Seattle, defendant, and moves the Court to vacate and set aside the judgment directed herein, and grant a new trial, for the following causes materially affecting the substantial rights of the City of Seattle:

I.

Insufficiency of the evidence to justify the decision.



II.

Error in law occurring at the trial.

HUGH M. CALDWELL,  
Corporation Counsel,  
FRANK S. GRIFFITH,  
Assistant,  
Attorneys for Defendant.

Service of the within Motion for new trial by delivery of a copy of the undersigned is hereby acknowledged this 8th day of January, 1918.

FLICK & PAUL,  
BOGLE, GRAVES, MERRITT &  
BOGLE,  
HUGHES, McMICKEN, RAMSEY &  
RUPP,

Attorneys for Plaintiff.

[Endorsed]: Motion for New Trial. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Jan. 10, 1918. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [28]

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*In the District Court of the United States for the  
Western District of Washington, Northern Division.*

No. 3561.

LLOYDS PLATE GLASS INSURANCE COMPANY, a Corporation,  
Plaintiff,

vs.

THE CITY OF SEATTLE, a Municipal Corporation,  
Defendant.

**Order Denying Petition for New Trial.**

In this cause the petition of the defendant for a new trial having been served and filed and submitted to the Court for consideration, it is by the Court ORDERED and CONSIDERED, upon due consideration, that said petition for a new trial be and the same is hereby denied, to which order the defendant excepts and its exception is allowed.

Done in open court this 10th day of January, 1918.

EDWARD E. CUSHMAN,  
Judge.

O.K. as to form.

GRIFFITH.

[Endorsed]: Order Denying Petition for New Trial. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Jan. 10, 1918. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [29]

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*In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

No. 3561.

LLOYDS PLATE GLASS INSURANCE COM-  
PANY, a Corporation,

Plaintiff,

vs.

THE CITY OF SEATTLE, a Municipal Corpora-  
tion,

Defendant.



**Defendant's Proposed Bill of Exceptions.**

BE IT REMEMBERED, that heretofore and on, to wit, the 3d day of December, 1917, the above-entitled cause came regularly on for trial in the above-entitled court before the Honorable E. E. Cushman, Judge of said court; plaintiff appearing by Messrs. E. C. Luccock of Bogle, Graves, Merritt & Bogle, E. H. Flick of Flick & Paul, and Otto B. Rupp of Hughes, McMicken, Ramsey & Rupp, its attorneys and counsel, and defendant appearing by Messrs. Hugh M. Caldwell and Frank S. Griffith, its attorneys and counsel; and a stipulation in writing waiving a jury having been signed by counsel for the respective parties and filed in this court, whereupon the following proceedings were had and done, to wit:

Counsel for plaintiff made an opening statement to the court, stating among other things the following:

“Mr. RUPP.—This is an action brought by the Lloyds Plate Glass Insurance Company against the City of Seattle, arising out of the following circumstances and facts: The Lloyds Plate Glass Insurance Company and the Globe Indemnity Company are both New York corporations engaged in the business of insuring plate glass in the City of Seattle and elsewhere. Sometime in the year 1915 [30] a scow containing about sixteen tons of dynamite was moored at one of the city's buoys in the City of Seattle somewhere near Harbor Island. At that time there was an ordinance of the City of Seattle providing for the maintenance of a powder maga-

zine or place in which powder might be stored, which ordinance provided that it should be stored at what is called the Harrison Street powder dock. There was in addition to that ordinance another ordinance of the City of Seattle, which is generally called I think the fire patrol ordinance, some sections of which will be material. And there is also, in addition to that, certain statutes of the State of Washington relative to the storage of explosives in cities. This dynamite remained there for a period of about fourteen days I think, and a charge was made by the City of a dollar a day for the storage of this dynamite at this place. It exploded on Sunday morning about two o'clock and broke a large amount of plate glass all around the town. As a matter of fact I think the effect of this explosion was felt as far as Everett. I think some slight damage was even done up there.

The COURT.—I know it woke me up in Tacoma.

Mr. RUPP.—The various insurance companies thereupon paid, or rather, as provided for by the terms of the policies, replaced the glass of those people who had policies of insurance, and the amount of that with the salvage of the glass deducted is the amount of the claim here in dispute.”

Thereupon, counsel for defendant made an opening statement, stating among other things, the following:

“Mr. GRIFFITH.—There is no liability on the part of the City of Seattle in any particular. The only question that can be is: Were we careless and negligent in fixing the [31] place where the trans-

fer of powder and the anchorage of powder should be? Were we negligent in doing that when perhaps, after experience, some safer place might have been chosen? But, had we anchored it at Blakeley Rocks across the Sound or had we anchored it across the Straits or had we anchored it anywhere, the results of that explosion would not have been any different. Lights were broken at Tacoma and lights were broken in Hillman City. Between Seattle and Hillman City there is a ridge of hills and the testimony will show the lights were all broken out and the glass in the streets. And we will show that, had this explosion occurred at the Harrison Street wharf, the result to life would have been appalling.”

Counsel for plaintiff thereupon offered in evidence a map of the waterfront of the City of Seattle, showing among other things the location of buoy No. 1 and the Harrison Street powder dock. This map was admitted in evidence without objection, marked “Plaintiff’s Exhibit 1,” and a copy is attached to this bill of exceptions, marked Exhibit “A” and made a part hereof.

Plaintiff thereupon offered and read in evidence the claim filed by the Lloyds Plate Glass Company, a corporation, with the clerk of the City Council of the City of Seattle, on the 29th day of June, 1915, a copy of which is attached to this bill of exceptions marked Exhibit “B,” and made a part hereof. This claim was received in evidence over the objection of the defendant that the claim did not show “that the various persons who suffered a loss or damage filed any claim or authorized anybody else to file any

claim for them against the City of Seattle," The objection was overruled by the Court and an exception noted and allowed. [32]

Plaintiff then offered and read in evidence one of the claims filed by the Globe Indemnity Company with the clerk of the City Council of the City of Seattle, on June 29, 1915, a true and correct copy of which claim is attached to this bill of exceptions, marked Exhibit "C," and made a part hereof. This claim was received in evidence over the objection of the defendant that the claim did not show "that the various persons who suffered a loss or damage filed any claim or authorized anybody else to file any claim for them against the City of Seattle." The objection was overruled by the Court and an exception noted and allowed.

It was then stipulated by and between counsel for the respective parties that thirty other claims were filed by the Globe Indemnity Company with the clerk of the city council of the City of Seattle, on June 29, 1915, which said claims, with the exception of the names of the owners of the plate glass, the amounts and numbers of the policies and the dates thereof, the streets and numbers at which the windows were situated and the numbers of windows and the amounts of damage, were identical with Exhibit "C." It was also stipulated and agreed that these claims should be considered in evidence; subject, however, to the same objection as was made to the admission in evidence of Exhibit "C." The objection was overruled by the Court, and exception noted and allowed.



**Testimony of W. F. Zwick, for Plaintiff.**

W. F. ZWICK was called as a witness on behalf of the plaintiff, and being sworn, testified as follows:

That he was the special agent, adjuster and inspector for the Lloyds Plate Glass Insurance Company of New York, and that he had been such for seventeen years, and was such on May 29, 1915; that in April, 1914, and at all times thereafter, the Lloyds Plate Glass Insurance Company was [33] incorporated in the State of New York, its home office being at 63 William Street, New York City; that it had been engaged in business in the State of Washington since 1892, and had complied with all the laws of said last-named State relative to corporations; that it had appointed a statutory agent for the State of Washington, and had paid its annual license fee last due.

At this time counsel for plaintiff offered in evidence without objection, and the same was admitted, a certificate of the Insurance Department of the State of Washington, which certificate stated that the Lloyds Plate Glass Insurance Company had paid its annual license fees from April 1, 1914, to March 31, 1918, and that during all of said time said Insurance Company was duly licensed and authorized to transact business in this State.

Continuing, Mr. Zwick testified that he knew that at the time of the explosion the Lloyds Plate Glass Insurance Company had policies of insurance on all the properties named in Exhibit "A" attached to Exhibit "B" herein, with the exception of the Men's

claim for them against the City of Seattle," The objection was overruled by the Court and an exception noted and allowed. [32]

Plaintiff then offered and read in evidence one of the claims filed by the Globe Indemnity Company with the clerk of the City Council of the City of Seattle, on June 29, 1915, a true and correct copy of which claim is attached to this bill of exceptions, marked Exhibit "C," and made a part hereof. This claim was received in evidence over the objection of the defendant that the claim did not show "that the various persons who suffered a loss or damage filed any claim or authorized anybody else to file any claim for them against the City of Seattle." The objection was overruled by the Court and an exception noted and allowed.

It was then stipulated by and between counsel for the respective parties that thirty other claims were filed by the Globe Indemnity Company with the clerk of the city council of the City of Seattle, on June 29, 1915, which said claims, with the exception of the names of the owners of the plate glass, the amounts and numbers of the policies and the dates thereof, the streets and numbers at which the windows were situated and the numbers of windows and the amounts of damage, were identical with Exhibit "C." It was also stipulated and agreed that these claims should be considered in evidence; subject, however, to the same objection as was made to the admission in evidence of Exhibit "C." The objection was overruled by the Court, and exception noted and allowed.



**Testimony of W. F. Zwick, for Plaintiff.**

W. F. ZWICK was called as a witness on behalf of the plaintiff, and being sworn, testified as follows:

That he was the special agent, adjuster and inspector for the Lloyds Plate Glass Insurance Company of New York, and that he had been such for seventeen years, and was such on May 29, 1915; that in April, 1914, and at all times thereafter, the Lloyds Plate Glass Insurance Company was [33] incorporated in the State of New York, its home office being at 63 William Street, New York City; that it had been engaged in business in the State of Washington since 1892, and had complied with all the laws of said last-named State relative to corporations; that it had appointed a statutory agent for the State of Washington, and had paid its annual license fee last due.

At this time counsel for plaintiff offered in evidence without objection, and the same was admitted, a certificate of the Insurance Department of the State of Washington, which certificate stated that the Lloyds Plate Glass Insurance Company had paid its annual license fees from April 1, 1914, to March 31, 1918, and that during all of said time said Insurance Company was duly licensed and authorized to transact business in this State.

Continuing, Mr. Zwick testified that he knew that at the time of the explosion the Lloyds Plate Glass Insurance Company had policies of insurance on all the properties named in Exhibit "A" attached to Exhibit "B" herein, with the exception of the Men's

(Testimony of W. F. Zwick.)

Bootery, F. L. Heidrich & Co., Cowley Investment Co., May Thagard, Outlet Clothing Co., Stengen & Ursditsky, Crawford & Wagner, Shibata Company, Ale Meister, Hans Graf (two policies), Cascade Gas & Electric Fixture Co., Oriental American Bank, Crescent Manufacturing Co., Muhl Store and Contractors Equipment Co. That with reference to the windows covered by the policies of insurance of which he had knowledge, the Lloyds Plate Glass Company in each and every instance replaced the plate glass, and then the plate glass company billed the Insurance Company for the value of the glass so replaced, less the salvage. [34]

Q. Is that correct? A. Yes, sir.

Q. Examining these amounts, can you state whether those are correct?

A. No, I would not say that. There were too many of them and there was too much of a turmoil at the time to get each specific amount, you know, because the dealer replaced the glass and then sent these on to the San Francisco office. Some came into my possession and some not.

Q. Are you able to identify any of these amounts?

A. Those exact amounts, no, I would not say that.

Q. Do you know the full amount paid by you to the plate glass company as the result of this explosion for the people named in that list?

(The list referred to is Exhibit "A" attached to Exhibit "B" herein.)

A. No, I would not swear to a single—as to the exact amount, because there are too many of them to figure on.

(Testimony of W. F. Zwick.)

Q. What I am asking you is: How much money did the Lloyds Plate Glass Company pay to these various plate glass people to restore this glass?

A. Nearly \$6,000.00.

The COURT.—If you are going to determine absolutely upon that matter, you had better fix the minimum amount.

A. I might state that I think there are some accounts that came in later that were not included in that, so I think it was over \$6,200.00, including those that are filed and those not filed.

Q. Well, what was the—as a matter of fact the amount paid outside of those that came in later to the [35] people named herein was not less than \$5,700.00. Isn't that correct?

A. I think it was over \$5,800.00.

Continuing, Mr. Zwick testified that the policies of insurance written by the Lloyds Plate Glass Insurance Company on the various properties named in exhibit "A" attached to exhibit "B" herein were in all respects identical with the exception of names, dates and amounts; that the policies must, by law, be all alike; that the form of policy attached to the amended complaint as exhibit "D" to said amended complaint was the form of policy used in each and every instance; (said form of policy attached to said amended complaint as exhibit "D" being hereby referred to and made a part of this bill of exceptions) and that at the time of the explosion all persons named in exhibit "A" attached to exhibit "B" herein had valid policies of insurance.

**Testimony of L. D. Gilmer, for Plaintiff.**

L. D. GILMER was called as a witness on behalf of the plaintiff, and after being first duly sworn, testified as follows:

That he had been engaged in the insurance business since 1887; that in May, 1915, he was the local resident agent of the Lloyds Plate Glass Company; that he, himself, had written policies of insurance on the Standard Furniture Company, northwest corner of Second and Pine Street, the Bon Marche, southwest corner of Second Avenue and Pike Street, Thos. M. Green, the Stadaker Bldg., 5th Avenue between Pike and Union, Butler Hotel Company, northwest corner of Second and James, H. N. Richmond, Virginia Hotel, 4th and Cherry, Herman & Blumenthal, 120 Second Ave., South, and Shafer Brothers, 92 Yesler Way. That to the best of his knowledge and belief, the amounts set opposite the names of the holders of the policies which he had written [36] were the values of the glass replaced less the value of the salvage of the glass recovered; that the glass was replaced as soon as possible after the explosion; that he was out of the city at the time of the explosion, but that he heard the explosion and came to Seattle the next morning; that nothing was done relative to the replacement of any of the glass insured by the Lloyds Plate Glass Insurance Company until he reached the City of Seattle; that while he did not measure the glass in order to determine the exact amount of the salvage, yet all windows that

(Testimony of L. D. Gilmer.)

showed any salvage at all he went around and looked at; that in fact the glass was all knocked out; that the glass was replaced just as soon as possible after the explosion; that the glass market was demoralized and so much glass had to be put in that all of it could not be put in immediately, and that some glass in the City of Seattle it was not possible to replace until the month of December, 1915.

Other witnesses who were agents of the Lloyds Plate Glass Insurance Company in May, 1915, were called on behalf of the plaintiff, and after being duly sworn, testified that they each had written policies of insurance on some of the properties described in said exhibit "A" to said exhibit "B" herein; that the policies so written by them, added to the policies written by the witnesses Zwick and Gilmer, constituted all the policies described in said exhibit "A" to said exhibit "B"; that the Lloyds Plate Glass Company after the explosion replaced glass, as provided for by said policies, of the value and the amount as set forth in said exhibit "A" to said exhibit "B" herein. No one of these witnesses testified that the total loss or damage sustained by the Lloyds Plate Glass Company was caused by the explosion [37] of the dynamite on the scow anchored at Buoy No. 1.

### **Testimony of L. V. Brewer, for Plaintiff.**

L. V. BREWER was called as a witness on behalf of the plaintiff, and after being duly sworn, testified that he was a member of the firm of John Davis & Company, a corporation organized under the laws of



(Testimony of L. V. Brewer.)

the State of Washington; that John Davis & Company was the general agent of the Globe Indemnity Company, a corporation organized under the laws of the State of New York; that in 1914, and at all times thereafter, it was a corporation organized under the laws of the State of New York, with its home office at 45 William Street, New York City; that the Globe Indemnity Company was in May, 1915, and at all times thereafter, doing business in the State of Washington, and had complied with the laws of that state relative to foreign corporations doing business in such state, and that it had paid its annual license fee last due.

Counsel for plaintiff thereupon offered in evidence the original policy issued to Lennons, Inc., No. 334,362. A copy of this policy is hereto attached, marked exhibit "D" and by this reference made a part of this bill of exceptions.

Continuing, Mr. Brewer testified that the Globe Indemnity Company on May 30, 1915, had outstanding and in full force and effect the policies of insurance set forth in exhibit "E" hereto attached and made a part of this bill of exceptions. That all said policies were standard policies.

Q. Were those windows damaged by any explosion which took place in Seattle Harbor on the 29th of May of that year?      A. Yes, sir.

Mr. GRIFFITH.—Does he know that of his own knowledge?

Q. Now, I hand you what is known as Plaintiff's Exhibit No. 8 (exhibit "E" herein) and I ask you if



(Testimony of L. V. Brewer.)

you know [38] whether or not the names of the individuals therein appearing, the numbers of the policies and the date of the issuance of the policies, and the amounts set opposite their names, are the policies referred to by you, and are those the amounts that were paid to these various policy-holders by reason of this explosion?

A. I believe so. I think I made up this list. I am familiar with all the names.

(“Plaintiff’s Exhibit No. 8” referred to in the preceding question is the same as exhibit “B” attached to the amended complaint, and exhibit “E” herein).

Mr. Brewer further testified that to each of the thirty-one claims filed by the Globe Indemnity Company with the clerk of the City Council on June 29, 1915, there was attached a bill of the glass company which had replaced the glass, each of which bills showed the value of the glass replaced, less the amount of the salvage.

### **Testimony of A. A. Paysse, for Plaintiff.**

A. A. PAYSSE was called as a witness on behalf of the plaintiff, and, after being first duly sworn, testified as follows:

That he was now and had been for three and one-half years port warden of the City of Seattle; that he was such port warden in May, 1915; that he was familiar with buoy No. 1; that said buoy was marked by a circle on exhibit “A” attached to this bill of exceptions; that the City of Seattle placed buoy

(Testimony of A. A. Paysse.)

No. 1 in its present location in 1912; that buoy No. 1 was within the city limits of the City of Seattle, and within that part of the Seattle Harbor known as "Elliott Bay Anchorage"; that the scow containing 15 tons of dynamite was moored to this buoy on May 14, 1915, but that he did not know of it until the following morning, when he issued a permit to the Lillico Launch & Tow Boat Co., charterer of the [39] scow and agent of the owners of the dynamite, to moor to Buoy No. 1 a scow containing 15 tons of dynamite; that at the time he issued such permit, he knew that the scow had on board about 15 tons of dynamite; that the City made a charge to the Lillico Launch & Tow Boat Company for such anchorage of one dollar per day, which the tow boat company paid to the City; that he required the Lillico Launch & Tow Boat Company to maintain on the scow during the day a red flag conspicuously hoisted not exceeding twenty feet above the deck of the scow, such being International Code Flag B; that he also required the Lillico Company to maintain a light on the scow at night, and that the Lillico Company did maintain these signals; that the scow was anchored at buoy No. 1 from May 14th to May 30th, at which time the dynamite on the scow exploded.

Mr. RUPP.—Q. Do you know whether or not the dynamite on board the scow did explode?

A. I heard a very loud explosion and was there at the previous location of this scow, I presume, an hour after it occurred, and I assume that that was the powder that did explode.

(Testimony of A. A. Paysse.)

Q. Well, was there any of the scow or dynamite left?

A. Yes, there was a lot of rubbish there.

Q. Now, at the same time that this scow was moored there, was there another scow adjoining this dynamite—was there another scow moored at the same buoy?

A. There was a scow of coal lying at Buoy 5 which was moored to Buoy 1.

Q. Was it close alongside this particular barge containing the dynamite? [40]

A. It was.

Q. What happened to that coal?

A. It turned over and the scow remained upside down.

Q. That scow of coal was moored there after the dynamite was put there? A. Yes, sir.

Q. Just when, if you remember, was it that that scow of dynamite was placed at this particular buoy?

A. If I recollect rightly, it was there on the morning of the 15th of May.

The COURT.—How many days was this dynamite stored there at Buoy No. 1 before it exploded?

Mr. GRIFFITH.—I think about fourteen days.

A. Fourteen days, yes.

Q. I hand you a copy of the record of the port warden and ask you if, by referring to that, you can tell what date it was, that it was in fact moored there? (Handing paper to witness.)

A. It was there on the 14th and exploded on the 30th.

(Testimony of A. A. Paysse.)

Q. Mr. Paysse, how far away from the north end of Harbor Island is Buoy No. 1 where this scow was located?

A. Between twelve and thirteen hundred feet.

Q. How far from, say, Railroad Avenue?

A. It is about half a mile from buoy No. 1 to the shore along Railroad Avenue.

Q. Well, do you know whether or not that explosion caused the breaking of any glass in the downtown district of the City of Seattle?

A. I believe it did, yes. [41]

Q. Do you know how extensive the damage was that was done by that explosion? A. No, I do not.

Q. Do you know how far away the explosion was felt? A. That I know of positively?

Q. Yes.

A. Why, I saw glass on the street in the Pike Street District and all the way down until I got to pier 1. That is the territory that I covered immediately after the explosion.

Q. How far away was buoy 1 from, we will say, the down-town business section of the city?

A. Do you mean First, Second and Third Avenues?

Q. Yes, First Avenue.

A. Well, it would be the number of blocks that would be more than half a mile. I think my office on the face of pier 1 is very close to half a mile.

Q. From buoy No. 1?

A. From buoy No. 1. The dock is a thousand feet long and that would bring you to Railroad Avenue,

(Testimony of A. A. Paysse.)

and as many blocks as you would have to figure from there.

Q. And you would have two blocks between that and First Avenue?     A. Yes, sir.

Q. Railroad and Western?     A. Yes, sir.

On cross-examination by Mr. GRIFFITH, he testified [42] as follows: That most of the traffic in Seattle harbor comes around Duwamish Head by the bell buoy at West Seattle; that the Mosquito Fleet comes that way and makes for Colman Dock and pier 3; that none of this shipping comes within half a mile of buoy No. 1; that Harbor Island was a body of filled in land in Elliott Bay, and in May, 1915, was practically unoccupied. That the two precautions which it was necessary to take in ascertaining what was a safe place for the handling of high explosives were to keep it away from fire and from contact with people; that the dynamite in question had been shipped by the Hercules Powder Company from San Francisco, was brought to Seattle on the steamer "F. S. Loop"; that said steamer was engaged in the Coastal trade; that he was informed that the ultimate destination of the dynamite was Vladivostok, Russia; that he had also been informed that the dynamite was to be transported from Seattle to Vladivostok on the — Maru, but that said vessel could not take it; that it was then arranged that the "Robert Dollar" should carry the dynamite to Vladivostok, and that the "Dollar" was to sail on May 31st; that the Harrison Street powder dock was



(Testimony of A. A. Paysse.)

situated at the foot of Harrison Street in Seattle; that the — Maru sailed from Seattle about a week after the dynamite had been transferred from the “Loop” to the scow.

He further testified on cross-examination, as follows: That the Harrison Street powder dock was used in 1915 for the transfer of small quantities of explosives for interior consumption; that no dynamite or high explosive was ever transferred in interstate or foreign commerce at the Harrison Street powder dock; that the transfer of powder from one ship to another took place at the said buoy or in [43] the open right in front of Elliott Bay; that neither the port warden or the City of Seattle had anything to do with the scow on which it was transferred; that neither the City nor the port warden at any time exercised any authority or control over the scow or its contents after it was anchored to buoy No. 1, and that the City never had this dynamite “in storage of any kind, shape or description”; that the cost of installing a buoy was between eleven and twelve thousand dollars; that the income from buoy No. 1 during the year 1915 was an average of fifty-one cents a day; that the cost of its maintenance and upkeep was between \$150.00 and \$250.00 per year; that there is no place in Elliott Bay which was less subject to fire and more safe for the transfer of explosives than buoy No. 1; that the hill above the Harrison Street dock was heavily settled; that the Harrison Street dock was half a mile from Kinnear Park, and that the territory from the water clear



(Testimony of A. A. Paysse.)

back to the top of Queen Anne Hill near the Harrison Street dock, was thickly settled. All of this last-named testimony was admitted in evidence over the objection of counsel for plaintiff that the testimony was wholly irrelevant, incompetent and immaterial. The Court overruled the objection, and exception was taken and allowed.

On redirect examination, Mr. Paysse testified that the map introduced in evidence, and being exhibit "A" attached to this bill of exceptions, correctly showed the location of the various industrial plants within the vicinity of buoy No. 1 on May 30, 1915, with the exception that one or two plants such as Skinner & Eddy and Ames Shipbuilding Company, have been added since that time; that the Centennial Mills and Albers Mill were about one-half [44] mile from buoy No. 1.

Counsel for plaintiff then offered in evidence and same was received without objection, a contract of assignment between the Globe Indemnity Company and the Lloyds Plate Glass Insurance Company. A copy of this assignment is attached to the amended complaint, marked exhibit "C," and by this reference made a part of this bill of exceptions.

Counsel for plaintiff thereupon offered in evidence and same was read and admitted in evidence without objection, a power of attorney executed by the Globe Indemnity Company authorizing L. B. Brewer to execute the contract of assignment from the Globe Indemnity Company to the Lloyds Plate Glass Insurance Company.

Counsel for plaintiff thereupon offered in evidence and the same was read and admitted in evidence, without objection, Ordinance No. 34,379 of the ordinances of the City of Seattle, the material sections of which are as follows:

Section 1.

The City of Seattle in the exercise of its police power hereby assumes control and jurisdiction over all navigable waters within the City of Seattle over which the city has control and jurisdiction, and such waters shall, for the purpose of this ordinance, be known as "Seattle Harbor." [45]

Section 2.

The word "vessel" shall include ships, boats, steamers, scows, barges and other structures adapted to navigation or movement from place to place by water.

Section 4.

The master of every vessel entering the harbor between the hours of eight (8) o'clock A. M. and five (5) o'clock P. M. of any day, except Sundays and holidays, shall report to the port warden before five (5) o'clock P. M. of such day, and if entering the harbor between five (5) o'clock P. M. of any day and eight (8) o'clock A. M. of the next day shall report to the port warden at eight (8) o'clock A. M. of such next day, and if entering the harbor day or night upon any Sunday or legal holiday shall report to the port warden at eight (8) o'clock A. M. on the next legal day, stating name of vessel, master, tonnage, amount and nature of cargo, and such other information as may be required by the port warden;

provided, that these provisions shall not apply to vessels carrying cargoes or part cargoes of explosives, nor to coastwise vessels, nor to those plying between Puget Sound ports. [46]

“Section 7.

“All waters herein specified, subject to reservations for anchorage, shall be known as ‘fairway,’ and shall not be obstructed in any manner whereby navigation may be endangered or impeded, and shall include, subject to such reservations, the following described waters:

“All of Elliott Bay, lying easterly of a straight line drawn from Alki Point to West Point;

“All of the East and West Waterways;

“All of the Duwamish River;

“All of the Duwamish waterway project;

“All of Salmon Bay;

“All of Lake Washington Canal, outside that portion which shall be under the supervision and control of the United States government;

“All of Lake Washington, Lake Union and Green Lake, lying or being within the corporate limits of the city of Seattle or within the jurisdiction and control of the city;

“All that portion of Shilshole Bay, lying easterly and southerly of a line from West Point to the intersection of the northerly boundary of the City of Seattle with the outer harbor line.

“All navigable waters in the projection of public streets, lying on the landward side of the outer harbor line shall be fairway. It shall be unlawful for the master, or other person in charge of any vessel,

to anchor, tie or make fast such vessel in any such fairway for a longer period of time than reasonably sufficient to load or unload the same, except that the port warden may, in his discretion, grant any permit for the use of any such fairway for a longer period of time whenever in his judgment such use will not interfere [47] with the use of the fairway by any other vessel, but only upon the payment of the anchorage charges herein provided for."

"Section 8.

"In aid of commerce and navigation anchorage for vessels is authorized in the following described waters:

"Elliott Bay Anchorage—Beginning at the northeast corner of Harbor Island; thence northerly and in a straight line to a point intersecting a line drawn along the north side of King Street; thence west on said line to a point intersecting the east line of the West Waterway; thence along said east line to the northwest corner of Harbor Island; also, beginning at a point of intersection of the outer harbor line with a straight line drawn along the west line of the West Waterway; thence north to a point intersecting a straight line drawn along the north side of Washington Street; thence in a westerly direction to the junction of the outer harbor line and the east side of the West Seattle Ferry dock."

"Section 9.

"It shall be unlawful for any master or person having charge of any vessel to anchor or make the same fast in the waters of the fairway or anchorage, without first obtaining a permit therefor from the

port warden and paying anchorage as follows:

“Anchorage at city buoys—Every vessel attached to any city buoy shall pay as follows:

“Vessels under 500 tons, each day or part thereof \$1.00.

“The port warden shall have power, and it shall be his duty, to remove any vessel from any buoy, wharf or anchorage [48] for nonpayment of any fees required by this ordinance, and the cost of such removal, together with the cost of any accidents arising therefrom, and the amount of such fees, shall be recovered by the City of Seattle against such vessel or the master thereof.”

“Section 16.

“It shall be unlawful for the owner or master of any vessel to allow the same to remain anchored or moored or made fast to or lie at any pier, unless there shall be on board such vessel at all times a competent watchman.”

“Section 19.

“It shall be unlawful for any person to handle or store on any pier, other than a pier specially designated for such purposes, any explosive, outside packages containing in the same compartment interior packages the mixtures of whose contents would be liable to cause danger, evolution of heat, gas or corrosive materials; cylinders containing gases capable of combining chemically; packages containing dangerous articles in a leaking condition or in such an insecure condition as to make leakage probable during transit; rags or cotton waste oily with more than five (5) per cent of vegetable or animal oil, or wet



rags; charcoal screenings from wet charcoal or wet screenings or screenings that have been wet, iron sponge and spent oxide that has not been properly oxidized during manufacture.”

“Section 33.

“No master, or other person in charge of any vessel or obstruction, shall attach the same to any city buoy until he shall have obtained permission so to do from the port warden; provided, that during the night or in bad weather such vessel or obstruction may be attached to any vacant [49] city buoy, but the master, owner or person in charge thereof shall notify the port warden not later than eight (8) o'clock A. M. of the next legal day of such act, stating the name and character of such vessel or obstruction and the probable length of time it is desired to remain at said buoy. Should more than one vessel or obstruction apply for the use of any particular buoy, the port warden shall be the sole judge as to which shall occupy the same, and his decision shall be final and conclusive.”

“Section 38.

“Every vessel engaged in the transfer of any explosive from one vessel to another within Seattle Harbor, shall come to an absolute stop before beginning such transfer and shall not move its propelling machinery during any time that such explosive is being transferred, and during all the times of such transfer each such vessel shall have on board a written permit from the port warden to make such transfer, and each such vessel shall have conspicuously displayed where it can best be seen from any



point of the horizon the powder flag or International Code Flag 'B.'

"Every vessel approaching or passing any vessel engaged in the transfer of explosives and from which are displayed the powder flag hereinbefore required, shall slow down to a speed not exceeding six (6) nautical miles per hour before coming abreast of such vessels so transferring explosives and in time to prevent accident by reason of swells.

"Every vessel lying at any powder dock or at anchor within Seattle Harbor, which has a cargo, or part cargo, of dynamite, ignition caps, blasting or sporting powder, or other high explosive or explosives, in any form, shall, between sunset and sunrise display at some point not [50] exceeding twenty (20) feet above the hull of such vessel one red light in a lantern so constructed as to show a clear uniform and unbroken light visible all around the horizon at a distance of at least one mile, and every such vessel in or upon any part of Seattle Harbor between sunrise and sunset carrying any such explosive or explosives shall display from a conspicuous hoist, and visible all around the horizon, a red flag, being the International Code Flag 'B.'

"No person shall on any pier, or other structure, except on the powder dock or on powder boats, within Seattle Harbor, store or have on hand for sale, or sell, or keep any powder, ignition caps, dynamite or other like explosive, either by day or night.

"No vessel with a cargo, or part cargo, of powder, ignition caps, dynamite or other like explosive, arriving at Seattle Harbor, shall lie alongside of or

make fast to any pier until the port warden shall have issued a written permit so to do.

“No person shall handle any leaking or damaged package of explosive, or packages of explosives which shows excessive dampness or shows mold or shows signs of any oily stain or other indication that the liquid part of such explosive is not perfect, or that the amounts of liquid part is greater than the absorbent can carry, either at the powder dock or at any other place in Seattle Harbor.

“No vessel carrying a cargo, or part cargo, of dynamite, ignition caps, blasting or sporting powder, or other high explosive in any form, shall come to or lie at any pier in Seattle Harbor between sunset and sunrise, except at the powder dock, and then only when a written permit to lie [51] thereat shall have been obtained from the port warden.

“Any vessel desiring a permanent berth at the powder dock for the transfer of powder shall pay to the port warden a minimum charge of twenty-five (25) dollars per month when such vessel does not exceed fifty (50) net tons, which shall allow such vessel to lie thereat and discharge or handle in any one month not over twenty-five (25) tons of explosives over the same. Whenever any vessel shall handle more than twenty-five (25) tons of explosives over such dock in any one month the regular one (1) dollar per ton rate shall be collected in lieu of said twenty-five (25) dollar rate.

“Every powder boat engaged in the transfer or handling of explosives and lying at the powder dock for such purpose, or for the transfer of explosives

direct to vessels on the day of departure as permitted herein, shall have on board a written permit from the port warden known as a 'Monthly Powder Permit.' The port warden shall collect two (2) dollars for each monthly powder permit and the terms of the permit shall comply with the provisions of this ordinance, which permit may be revoked by the port warden for cause without notice.

"Smoking is absolutely prohibited on the powder dock, and on every vessel lying thereat, and on every powder boat and on every vessel to which explosives are being transferred in Seattle Harbor.

"Every vessel carrying a cargo of explosives in any form, while lying at anchor or at a city buoy, or alongside the powder dock, shall at all times, both by day and night, have on board a competent and sufficient crew, which shall at all times display the required signals and be ready to and have authority to immediately move such vessel when emergency [52] requires, or when required by the port warden.

"No explosive of any kind shall be handled or transferred from or to a powder boat, powder dock or other vessel by means of any power device, or in slings, or by sliding down chutes, or planks, or gangways, but shall be handled only by hand.

"Whenever artificial light is necessary or is used on the powder dock, on any powder boat or on any vessel engaged in the transfer of explosives, only incandescent electric lights shall be used, and no open light of any description, whether oil lights or otherwise, shall be used or maintained in any manner.

"Every vessel, whether lying at anchor or at a city

buoy or in any other position within Seattle Harbor, engaged in the transfer of explosives, shall have on board at the time of such transfer a written permit therefor from the port warden, which permit shall state the time and place of such transfer and the amount of explosives to be handled.

“Except as otherwise in this ordinance provided, the port warden shall collect the sum of fifty (50) cents for each and every explosive permit issued by him; provided, permits issued to the United States government under the provisions of this ordinance shall be free of charge.

“When, in the judgment of the port warden, any person to whom any permit has been issued under the provisions of this ordinance for the handling of explosives, shall have violated any of the terms of such permit, it shall be his duty to revoke said permit forthwith.”

“Section 39.

“The Harrison Street municipal pier is hereby designated for use temporarily as a powder dock, and for use exclusively for the handling [53] of powder, dynamite and other like explosives, and as a place for vessels carrying as cargo, or part cargo, such explosives. Any vessel shall be allowed to lie at said pier only after a written permit shall have been issued by the port warden.

Section 43.

The master, owner or other person in charge of any vessel made fast to any pier, or other structure owned by or under the authority and control of the City of Seattle, and any vessel lying at anchor in

Seattle Harbor, or any vessel lying at any pier, obstructing any slip, fairway, or other vessel, shall, when requested by the port warden to change position, immediately proceed as requested or directed. Any failure, neglect or refusal to comply with such request or order shall make it the duty of the port warden to move such vessel, or cause the same to be moved, and the expense of such removal shall be paid by the master, owner or other person in charge thereof, or by said vessel.

Section 54.

Every vessel, or person in charge thereof, shall pay to the port warden at his office and before such vessel shall leave her berth, the amount due the city for tolls, wharfage, buoyage, anchorage, water, or any other charges, and failures so to pay shall authorize the port warden to refuse the use of any municipally owned pier until such vessel, or person, has paid the amounts due the city in full.

Counsel for plaintiff thereupon offered in evidence Sections 22, 24, 26 and 27 of Ordinance 28324 of the Ordinances of the City of Seattle, known generally as the "general fire patrol ordinance," which said sections are as follows: [54]

"Section 22.

"It shall be unlawful for any person, firm or corporation, whether licensed or not, to keep, store, or have on hand, within the limits of the City of Seattle, between the hours of 6 P. M. and 7 A. M., any dynamite." . . .

"Section 24.

"All explosives to be removed beyond city limits



at night; Provided, however, that the provisions of this section shall not apply to the master or other person in charge of any steamboat, vessel or railroad car transporting any such powder, dynamite or explosive substances to or from the City of Seattle in accordance with the provisions of this ordinance, except as hereinafter provided.”

“Section 26.

“Every master or other person in charge of any steamboat, vessel or other water craft, having on board any of the explosive substances mentioned in the preceding sections, shall, immediately upon arriving in the harbor of the City of Seattle, and before landing at any wharf or dock, notify the harbor master, in writing, of the arrival of such . . . water craft within the harbor, the amount of such explosives on board and the name of the consignee and the place of destination thereof, and obtain from the harbor master a permit to land such explosive substances, which permit shall specify the dock or wharf where such explosive substances may be landed, and the time when the same shall be unloaded, which time shall begin not less than 6 hours after the issuance of such permit, and a copy of such permit shall be by such master or other person having charge of such . . . , water craft, immediately, and before such landing is made, given to the chief of the Fire Department of the City of [55] Seattle at the office of the Chief of the Fire Department. \* \* \* All such explosive substances shall be discharged, landed or unloaded under the supervision of the Chief of the Fire Department, and shall



be immediately transported to some point without the limits of said city, and in case of failure on the part of the consignee, owner or other person having charge of such explosive substances to transport the same outside the limits of the city as hereinabove provided, the same shall be transported by the Chief of the Fire Department, or by some person by him appointed, at the expense of such owner or consignee.

Section 27.

It shall be unlawful for any person, firm or corporation to leave, deposit or store in any part of the City of Seattle, during transit, any of the explosive substances mentioned in the foregoing sections, except at a wharf or railroad depot for immediate shipment.

To the introduction of these sections of said Ordinance No. 28,324 counsel for defendant objected as follows:

Mr. GRIFFITH.—I want to object to that on the ground that it is wholly immaterial and that it has no bearing on the case at all. It is relative to the fire hazard in the City of Seattle and not relative to the transfer of explosives in commerce.

The Court overruled the objection, and an exception was taken and allowed.

There was also offered and read in evidence by the plaintiff, without objection, Section 10 of Article IV, of the Charter of the City of Seattle, which said section is as follows:

“Every legislative act of said City shall be by ordinance. Every ordinance shall be clearly entitled and shall contain but one subject, which shall be

clearly expressed in its [56] title. The enacting clause of every ordinance shall be: 'Be it ordained by the City of Seattle as follows: ' "

There was also offered in evidence by the plaintiff without objection Section 18 of Article IV of the Charter of the City of Seattle, the material portions of which section are as follows:

"Sec. 18. The city council shall have power by ordinance and not otherwise—

"To make regulations for the prevention of accidents by fire, to organize and establish a fire department, to provide fire engines and other apparatus, and to provide for the prevention and extinguishment of fires and to regulate or prohibit the transportation, keeping or storage of all combustible or explosive materials within the corporate limits of the city, and to restrain and regulate and prohibit the use of fireworks."

"To control, regulate and prohibit the anchorage, moorage and landing of all water craft and their cargoes within the jurisdiction of the corporation."

"To fix the rate of wharfage, storage and dockage, and to provide for the collection thereof, and to provide for the imposition and collection of such harbor fees as may be consistent with the laws of the United States."

There was also introduced in evidence by the plaintiff without objection Section 1 of Article VIII, and sub-division five of Section 5 of Article VIII, of the Charter of the City of Seattle, which provisions are as follows:

"Section 1. There shall be, and is hereby created,

a board of public works which shall consist of six (6) members, to wit: (1) The city engineer; (2) the superintendent of streets and sewers; (3) the superintendent of waterworks; (4) the superintendent of lighting; (5) the superintendent of buildings; (6) the superintendent of [57] public utilities.”

“Sec. 5. The board is hereby authorized and empowered, and it is hereby made its duty, subject to the provisions of the city charter, and saving to the city council such powers as are given to it in this charter:

“Fifth. To have the control, management, building, repairing and the direction of all wharves, docks, bridges, viaducts, landings, slips, boats and other structures which shall be building or owned by the city.”

There was also offered in evidence by the plaintiff without objection on the part of the defendant Article XII of the Charter of the City of Seattle, which said Article XII is as follows:

“Article XII.

“THE HARBOR DEPARTMENT.

“Section 1. Council to Control Harbor and Water Front:—The city council shall, unless otherwise prescribed by the laws of the state, exercise control and management of the harbor and water front of the City of Seattle, and shall, by ordinance, establish such rules and regulations as shall prevent any encroachment upon the *tital* area of the same.

“Sec. 2. Construction and Repair of Wharves:—The construction of all wharves which may be built by the city, and all repairs on the same, or other work

done on the water front by the city, shall be performed by the board of public works, after proceedings had in the manner and form prescribed for the construction, improvement and repair of public buildings.

“Sec. 3. Regulation of Wharves and Wharfage: The city council shall, by ordinance, regulate the tolls for wharfage, dockage and other charges at all wharves, slips, docks and landing places within the city, and provide for [58] the regulation of berths and landing of all steamers, sail vessels, barges or other water craft, and shall exercise in regard to all such wharves, slips, docks and landing places such other control not herein specified as shall not be inconsistent with the laws of the United States and of the State of Washington.

“Sec. 4. Wharves, Docks, Slips and Landing Places in Streets:—The city council may by ordinance order the construction of wharves, slips, docks or landing places upon any streets abutting upon or leading into any navigable waters within the city, which wharves, slips, docks and landing places, when so constructed, shall remain under the exclusive control of the city.

“Sec. 5. Port Warden:—The mayor, by and with the advice and consent of the city council, shall appoint a port warden, who shall perform such duties not inconsistent with this charter, in relation to harbors and wharves, as may be prescribed by ordinance, and who shall be deemed the head of the harbor department.”

Thereupon the plaintiff rested. [59]

Whereupon, counsel for defendant made the following motion for nonsuit:

“Mr. GRIFFITH.—Assuming that this testimony is before the court, the City at this time desires to move for a nonsuit, first on the ground that there is no testimony whatever showing any negligence on the part of the City of Seattle in permitting this anchorage at buoy No. 1—absolutely no testimony, not even a suspicion that it was negligent in that act. Second, the court will take judicial notice that while explosives are articles of commerce, as such they are not nuisances *per se*. Transportation of dynamite and those things which are not forbidden by Act of Congress are recognized as articles of commerce, and their transportation does not constitute a nuisance. There is no testimony here to show that the anchorage of this dynamite while it was in transit from the Hercules Powder Company of San Francisco to the consignees of Vladivostok was a nuisance in any sense of the term. The testimony affirmatively shows that it was in transit in commerce between San Francisco and Vladivostok through the port of Seattle.

That there is no testimony warranting any recovery, and that no proper claim has been filed with the City of Seattle.”

This motion was denied by the Court, to which counsel for the defendant excepted, and the exception was allowed. [60]



**Testimony of James S. Gibson, for Defendant.**

Whereupon the defendant, in order to sustain the issues in its behalf, called JAMES S. GIBSON as a witness, who, after being duly sworn, testified as follows:

That he was the manager of the International Stevedoring Company; that he had had twelve years' experience as a shipping master, and twenty-one years' experience as manager of a stevedoring company; that during that time he had handled large amounts of dynamite, but that he was not familiar with the contents of dynamite or its manufacture; that he was familiar with the location of the Harrison Street powder dock and with the location of all the buoys in the Seattle Harbor.

“Q. Now, Captain Gibson, from your experience as a shipping man in the handling of high explosives as the manager of this stevedoring concern, concerning the handling of dynamite of this character, would you say that buoy No. 1 was a safe place?

A. Absolutely.

Mr. RUPP.—Now, if the Court please, I object to that on the ground that it is immaterial, incompetent and irrelevant. In the first place, it is an attempt to show that buoy No. 1 is a safe place, and to that we say that the city itself has appointed a place at which the dynamite might be stored, and it does not make any difference, from that aspect of the case, if there were a thousand other safe places in Seattle Harbor for the storage of that dy-



(Testimony of James S. Gibson.)

namite as the Harrison Street dock was the only place at which this might be stored. In addition to that, I object to his testimony upon the ground and for the reason that I do not think that he is qualified as an expert.

The COURT.—I think upon the general issue of negligence [61] raised by the complaint this testimony may be material, but with reference to a nuisance *per se*, it is immaterial on that issue. The objection will be overruled.

Mr. RUPP.—To which I except.

The COURT.—Exception allowed.”

He further testified, over the objection of counsel for plaintiff, that the testimony was irrelevant, incompetent and immaterial:

That if the fifteen tons of dynamite had exploded at the Harrison Street dock, it would in his opinion, be impossible to estimate the damage that would have been done, but that such damage would have been undoubtedly very much more serious than the damage arising from the explosion at the buoy; that there were a number of people living near the Harrison Street powder dock. That it was the custom in 1915 in Seattle Harbor in transferring dynamite from vessels coastwise to vessels foreign “to take it alongside—away from the dock—either at buoys or at anchor away in the harbor, or adjacent thereto.” This method is pursued to avoid the dangerous consequences of handling dynamite alongside of the docks.

(Testimony of James S. Gibson.)

On cross-examination, by Mr. RUPP of counsel for plaintiff, the witness testified as follows:

That he had handled all kinds of explosives which were being shipped for war purposes; that he had not had any accidents of any kind; that he had no knowledge of any explosion except the one which gave rise to this controversy, but that he knew that dynamite was a good thing to be careful of.

Whereupon counsel for plaintiff moved to strike all the testimony of Mr. Gibson, upon the ground that he had not [62] shown that he was competent to testify as an expert; which motion was denied, and an exception taken and allowed.

### **Testimony of G. H. Adair, for Defendant.**

G. H. ADAIR was then called as a witness on behalf of the defendant, and, after being first duly sworn, testified as follows:

That he had been directly engaged in the business of handling high explosives for twenty-four years; that he was familiar with the explosive known as 90% nitro-glycerin gelatin content and that it was commonly known as dynamite of one class; that to a great extent he was familiar with its characteristics; that the things which are most sought to be prevented with reference to high explosives are, first, to isolate it as completely as possible from fire, and, second, from the human element of carelessness; that it requires a fire or a detonator to make such dynamite explode. That he knew about where Buoy No. 1 was located.

(Testimony of G. H. Adair.)

He further testified, over the objection of counsel for plaintiff that the following testimony admitted in evidence was irrelevant, incompetent and immaterial (which objection was overruled by the Court, and an exception taken and allowed):

That Buoy No. 1 was a safe place for the anchorage of vessels containing dynamite and that he did not know of any place which could be selected that would be safer; that he was familiar with the Harrison Street dock; that the dock at the time of the trial was used for the city pound; that in 1915 it was known as the powder dock and was used for distributing small shipments that were necessary to be brought through the limits of the City of Seattle, that is, for consumption in and about Seattle, and for transfer to railroads. There was no storage at that time in the City of Seattle. That none of the foreign shipments handled by him were handled [63] at the Harrison Street dock. That he would not have given consideration to the storing of fifteen or sixteen tons of dynamite at the Harrison Street dock; that he would not store any powder upon any land.

On cross-examination, by Mr. RUPP, he further testified:

That he did everything from the testing and demonstrating to the selling end of dynamite; that he handled the entire business of the Giant Powder Company in the Northwest; that he had never had any personal observation of an accidental explosion

(Testimony of G. H. Adair.)

of the magnitude of the explosion which occurred on May 30th; that he had witnessed at three different times intentional explosions of seventeen tons of dynamite. That he had himself been in charge of explosions of dynamite, but that the amounts exploded were not large. That he had never brought any large amounts of dynamite to the city of Seattle. That transshipments of dynamite prior to May 30, 1915, were made in the harbor of the city of Seattle from vessel to vessel.

He further testified, over the objection of counsel for defendant that the testimony was irrelevant and immaterial, which objection was overruled by the Court,—and an exception taken and allowed.

That since the explosion on May 30, 1915, transfers of dynamite had been made outside a line extending from a point 1,000 feet off Fauntleroy to a line intersecting at 1,000 feet off Alki Point, from there in a direct line to a point 1,000 feet off West Point and from there practically to the city limits on the north. That he believed that this line was clear outside of Elliott Bay, but that there were people living within 1,000 feet of the line above described, as such [64] line was only a little over 1,000 feet from Magnolia Bluff.

On redirect examination, he testified that if sixteen tons of dynamite exploding in Seattle Harbor at buoy No. 1 would break glass in Snohomish City and in Everett, some 33 or 34 miles away, he did not think the result would have been any different if the same amount of dynamite had exploded out-

(Testimony of G. H. Adair.)

side of the fairway, but that it was a thing which nobody could tell, because explosives are all freakish and the action is not direct from the explosion.

**Testimony of John H. Wilman, for Defendant.**

JOHN H. WILMAN was then called as a witness on behalf of the defendant, and, after being first duly sworn, testified as follows:

That he was in the employ of the Dupont Powder Company and had been engaged in the powder business for twenty-eight years in both manufacturing and selling powder. That he was familiar with the character and manufacture of nitro-glycerin gelatin content 80% or 90%; that it was a very powerful explosive, slightly less sensitive than the ordinary dynamite of commerce. That the things to be most guarded against in its handling were fire and isolation from traffic. That he was fairly familiar with the streets and waterfront of the city of Seattle. That buoy No. 1, in his judgment, was 1300 feet from Harbor Island, which was the nearest point of land that he knew of to the buoy. That there was no storage in the city of Seattle for dynamite in quantities of fifteen tons. That to explode dynamite of the character of that on buoy No. 1 requires fire and vibration. [65]

He further testified, over the objection of counsel for plaintiff (which objection was overruled by the Court, and an exception taken and noted) as follows:

“Q. Was buoy No. 1 a proper place to store and transfer dynamite?



(Testimony of John H. Wilman.)

A. It was, for such purposes as use was granted to us.

Q. If you, Mr. Wilman, were asked—having the knowledge of these explosives and the experience you have had with them—to fix a place in the bay for the mooring of vessels containing a high explosive of this kind and for their transfer, would you select buoy No. 1 as a safe place?

A. I would consider it such.

Q. Now, with your experience, would you consider for a moment the anchoring or tying up to a wharf in the city of Seattle the quantity of dynamite that was on that scow—of the kind that was on it?

A. I would not consider it safe and particularly at that time."

On cross-examination, by Mr. FLICK of counsel for the plaintiff, the witness testified:

That the danger of explosives is relative. It is extremely doubtful that if the explosion had taken place beyond the fairway, that is, the line extending from Alki Point to West Point lighthouse, the damage would have been any less, for the reason that the hills at Alki Point and Magnolia Bluff would have thrown the action of the dynamite right towards the city, whereas, under the conditions then prevailing, it was a sort of side action; that greater safety lay at the point in Elliott Bay, where the scow was located, because it had a chance to spread towards the open way; that [66] the force of the explosion would travel along the line of least resist-



(Testimony of John H. Wilman.)

ance; that if the dynamite were situated up against a hill "it would leave the worst phases of its power on the surface of the hill and along the surface of the ground up the hill." With reference to this particular explosion, however, the force would spread across towards the open space, and if the dynamite had been placed beyond the fairway, all the force would have been coming towards the city of Seattle. That dynamite operates in its immediate locality equally in every direction. The reason that we do not see the evidence greatest at the point of least resistance is because there is nothing at that point to resist it, there is nothing there to leave any evidence. That if there was a hill between the place where the dynamite exploded and a city, the effect upon the city would be determined by the abruptness of the hill. That a line running to the northeast from this buoy a mile long would reach or cross a number of railroad tracks; "whether it would be the bulk of the tracks entering the city of Seattle, I do not know." I doubt if the terminal trackage terminating in the two depots in the city of Seattle is within a mile of this buoy No. 1.

On redirect examination, by Mr. GRIFFITH of counsel for defendant, the witness testified as follows:

That he was familiar with the territory around the Harrison Street powder dock; that along the hill above the dock it was pretty thickly settled with residences.

He further testified, over the objection of counsel

(Testimony of John H. Wilman.)

for plaintiff that the following testimony was incompetent, irrelevant and immaterial (an exception having been taken and noted)—that an explosion of this amount of dynamite at the [67] Harrison Street powder dock would have been extremely dangerous to the residences and that the opportunity for loss of life would have been large. That he doubted that if dynamite of the kind in controversy had exploded beyond the fairway, the action would have been the same, for the reason that dynamite travels along water with more rapidity and certainty. That on the night of the explosion the water was as quiet as he ever saw it on Puget Sound, that there was just the barest movement of the water.

On recross-examination, by Mr. FLICK of counsel for plaintiff, the witness testified as follows:

That the explosion occurred about two o'clock in the morning. That immediately thereafter one of the salesmen of the Dupont Powder Company, who was stopping at the Butler Hotel, called him (Wilman) up and informed him that there had been a terrific explosion upon the waterfront, and that the salesman thought it was the boat of the Dupont Powder Company. That Wilman and the salesman then took an automobile and drove to Harbor Island and as far as they could thereon, stopping "within 1500 feet of the remains of the scow." That they arrived there about twenty-five minutes after the explosion. When they arrived at the point just mentioned, they were told by an employee of a saw-

(Testimony of John H. Wilman.)

mill on Harbor Island that "a couple of scows had exploded."

"Q. Where was your boat laying at the time?

A. Our boat was laying at that time we found, just off the foot of Harrison St. Dock.

Q. And was it loaded with dynamite?

A. No, it was not loaded with dynamite. The capacity of our boat is 40 tons.

Q. What is that?

A. The capacity of our boat is 40 tons. It had on it about 1900 lbs. of stump powder. [68]

Q. Did it have on board dynamite?

A. Dynamite is a kind of stump powder.

Q. Lying off the Harrison St. dock?

A. Yes, sir.

Q. Who permitted it to go in there?

A. Why, it is the dock specified by the Port Warden to approach.

Q. And you were put there by the Port Warden at that time, weren't you? A. Yes, sir.

Q. Now, isn't it a fact that before you started out your clerk or your employees told you that it was not your boat that had exploded?

A. No, he did not. He told me that he had tried to get the Chief of Police to find out what it was. He didn't know what it was when he went with me.

Q. This buoy is a mile and a half or two miles from the Harrison St. Dock, isn't it? A. I think it is.

Q. And the moment you set foot on the vessel, boat or launch to go to buoy No. 1 you knew you were going in a different direction than if you were going

(Testimony of John H. Wilman.)

to the Harrison St. Dock?

A. I didn't set foot in a vessel.

Q. How did you get over there?

A. We went in an automobile.

Q. You knew instantly, when you went south instead of going northward, that you were going to a place other than your boat?

A. He gave me the opinion—

Q. Just answer that question.

A. He gave me the opinion that the explosion was south and we went there. We didn't know whether our boat had gone around there or not.

Q. You knew long before you reached Harbor Island, Mr. Wilman, that it was not your boat that had the explosion?

A. No; we didn't know until a party there at the mill said it was those scows.

Q. What mill?      A. A sawmill there.

Q. On Harbor Island?      A. On Harbor Island.

Q. Approximately a mile and a half from this particular buoy?      A. No, sir.

Q. A mile?

A. We rode as far as we could on a roadway there and we were within 1500 feet of the remains of the scow—

Q. Yes.

A. —and we were told by an employee of that mill there that there had been an explosion there. We said, 'What was it,' and he said that there was a couple of scows there that had exploded.

(Testimony of John H. Wilman.)

Q. Up to that time you were riding with the Chief of Police?

A. No, sir. Riding in an automobile that we picked up at the Butler Hotel.

Q. Up to that time you didn't know whether it was your vessel or not, and at that time you mean to say now, Mr. Wilman, that you didn't know that your vessel was anchored at the Harrison St. Dock?

A. Well, a vessel that moves around—it came in from Pt. Angeles that morning some time— [69]

Q. Yes?

A. —and when I was told that it was our boat I said it was impossible because 'she is at Port Angeles or on her way from there,' and we went up there to that dock—we went from Harbor Island to that dock.

Q. Hadn't you known that she had been anchored at the Harrison St. Dock?

A. No. At nightfall the last report I had on her was that she was there at Pt. Angeles or on her way to Seattle.

Q. What other explosive did that vessel have at that time? A. How is that—our vessel?

Q. Yes.

A. No other explosive than the 1900 lbs. of stump powder. She had been on a voyage and had discharged her cargo and she came in to get orders and she was going out to our plant.

Q. Where had she discharged?

A. She had discharged at Bellingham, at a place called Utsalady, at Pt. Williams and Pt. Angeles.



(Testimony of John H. Wilman.)

Q. And she was lying here with this same type of stuff that is in issue here?

A. Not this same type of stuff. With a low form of dynamite, only stumping powder.

Q. Stumping powder? A. Yes, sir.

Q. Did you find out at that time if the Port Warden had designated the wharf?

A. He issued permits to come there.

Q. Do you pay a license or do you—

A. Every time; he never overlooks that.

Q. What is that? A. Every time.

Q. You pay rental?

Mr. GRIFFITH.—We object to that as not proper cross-examination. It is wholly immaterial.

The COURT.—Objection sustained.

Re-redirect Examination.

(By Mr. GRIFFITH.)

Q. Your boat was not tied up at the Harrison St. Dock. It was anchored in the bay off the dock?

A. Anchored off the dock.

Mr. FLICK.—What is that?

A. Anchored off the dock.

Q. In the bay? A. Yes, sir.

Q. And that boat is a boat used for local shipments?

A. It delivers small local lots of explosives.

Mr. GRIFFITH.—That is all.

Re-recross-examination.

(By Mr. RUPP.)

Q. How far off, about—how far off?



(Testimony of John H. Wilman.)

A. About a 1000 feet as near as I can remember it.

Q. You saw it that night?

A. No; it was not at night. It was in the morning.

Q. Well, what time in the morning?

A. I judge it was five o'clock by this time.

Mr. RUPP.—That is all." [70]

Thereupon Mr. Griffith offered in evidence, over the objection of counsel for plaintiff on the ground that the testimony was immaterial (which objection was overruled and an exception taken and noted), the following section of the regulations of the Interstate Commerce Commission of 1914, which section is as follows:

"Section 1503. High explosives are all explosives more power than ordinary black powder, except smokeless powders and fulminates. Their distinguishing characteristic is their susceptibility to detonation by a blasting cap. Examples of high explosives are the dynamites, picric acid, picrates, chlorate powders, nitrate of ammonia powders, dry trinitroto luol, dry nitrocellulose (gun cotton), and fireworks that can be exploded *en masse*." [71]

### Testimony of W. C. Dawson, for Defendant.

W. C. DAWSON was thereupon called as a witness on behalf of the defendant, and, after being first duly sworn, testified as follows:

That he had been for twenty years a steamship agent and operator; that as such agent and operator he had handled high explosives; that for a period of the last ten years his company had carried high

(Testimony of W. C. Dawson.)

explosives between San Francisco and Puget Sound almost continuously. That he was familiar with the location of buoy No. 1 and with the Harrison Street powder dock.

“Q. What would you say as to the safety of buoy No. 1 for the transferring of explosives such as are in issue here and as to the anchorage of boats or vessels carrying that explosive at that buoy?”

Mr. RUPP.—To which we object on the ground that it is incompetent, irrelevant and immaterial, and for the further reason that this man has not been shown to be an expert. The mere fact that a man is in the steamship business—

The COURT.—Objection overruled.

Mr. RUPP.—Exception.

The COURT.—Exception allowed.

A. I consider it a very proper and safe place for the exchange of explosives from one vessel to another.

Q. And to anchor boats?      A. Yes, sir.”

That from a steamship operator's point of view, carefulness is the thing which must be taken into consideration in the handling of explosives.

On cross-examination, by Mr. FLICK of counsel for the plaintiff, the witness testified as follows:  
[72]

That it was one of the regulations that dynamite should be handled by hand rather than by mechanical device; that while he could not say he had any expert knowledge about it, he supposed the purpose

(Testimony of W. C. Dawson.)

of this regulation was to require the exercise of care. That he had no scientific knowledge of the ingredients that make up dynamite or nitro-glycerin. That up to the time of this explosion he had only handled a very few small shipments at the Harrison Street dock; that his recollection was and he was positive that only such shipments as were used locally, and which passed through the city for distribution by railroads that had no other terminals, were handled at that dock; that for a period all inland shipments were handled over that dock; that he had not handled any large shipments over that dock himself; that by large shipments he meant anything over 40 or 50 tons; that he had no recollection of handling anything in excess of 10 tons over the Harrison Street dock; that the handling of 10 tons of dynamite over that dock was in his experience very infrequent. That he knew that other barges containing dynamite had been handled at buoys in the Seattle Harbor. That in 1915 he handled quite a few shipments for the Hercules Powder Company, but that the most of the shipments handled by him were handled for the Giant Powder Company; that the Giant shipments were not transferred in the harbor of Seattle, but were left at the depot at Possession Point on Whidby Island; that the Hercules Powder Company, so far as he knew, had no depot, and their shipments were transferred in the harbor of Seattle within Elliott Bay.

Whereupon the defendant rested.

Whereupon the plaintiff rested. [73]

Whereupon counsel for defendant renewed the motion made at the conclusion of plaintiff's testimony.

Whereupon argument to the Court was made by counsel for the respective parties. In the course of his closing argument, Mr. Rupp said:

"Now, right along at that same time let us come to this Kitsap County Transportation Company case, concerning which they talked so much.

\* \* \* \* \*

There was a charge against the city of negligence. Negligence how? In failing to enforce against some third person the provisions of the ordinances of the City of Seattle, but that is not this case. I quite agree that if Lillico, without having been directed so to do, had taken that dynamite down to buoy No. 1 and it had exploded, that we could not maintain a suit against the City of Seattle because it had failed to enforce the ordinances which would have required the storage of that powder at the Harrison Street Dock. I agree to that proposition. We have never asserted anything to the contrary, but we say that that is not this case. The Port Warden says, 'You shall not place it where the law says you shall place it, but I will make a law of my own and I say to you,—I direct you to go somewhere else.' Now, mind you, I am not charging that the Port Warden himself is guilty of any great wrongdoing in this matter. It has nothing to do with the case at all. The City of Seattle knows that this has been going on. They knew that he put it down there. They knew that they had an ordinance requiring it to be

put somewhere else, and it is their act and not his act against which we complain.”

At the conclusion of all argument, the Court said:  
[74]

The COURT.—Regarding this claim, I think it is perfectly clear that a corporation can only act by and through an agent and that these Washington decisions, to which my attention has been called, are not concerned with the sufficiency of the agency, but only where an individual had a claim—the necessity of the individual to verify the claim. I hold the claim is sufficient and, without undertaking to trace the source of the city’s power to regulate anchorages and establish buoys, I hold that the establishment of the buoy and the designation of the anchorage and collecting a fee for it all were within the power of the city, and they have so long been exercised and so uniformly in the cities that have harbors that even if I had any serious doubt about it, I would resolve it against the city. It would certainly be more of a calamity to try to establish a precedent in law that the city did not have this power than it would be to hold the city liable in this particular case. I do not see that the Federal Government’s general authority, when it sees fit to exercise its power over Interstate Commerce, is involved in this case where it has not undertaken to do so as regards harbors of this character.

The sole question in the case comes down to—possibly not the sole question, but the most important question in the case comes down to—the question of whether the city, through its harbormaster did



become liable by violating one of its own ordinances.

I had read before this case was tried and argued, the record in this case and the briefs several times and thereby had to some extent familiarized myself with these ordinances. With regard to the purposes of storage, and I hold [75] that this dynamite was in storage, I pause for a moment regarding the several witnesses for defense. The answer of one of them impressed me in just the conclusion that was forcing itself upon me during the progress of the trial, that is, in the absence of the control of the section of the ordinance regarding the powder dock, this might not have been an unsuitable place to effect a transfer of the powder from one vessel to another. Mr. Griffith asked his own witness the leading question, "Do you not conclude that this was a safe and suitable place for the storage of powder and for its transfer?" That is the substance of it. The witness answered, "I consider it suitable for its transfer." And Mr. Griffith was not satisfied with that answer and he said, "And also suitable for its storage?" and the witness hesitated and answered, "Yes." Now, his first answer was the one that impressed me as most reasonable and satisfactory and really the one that his conscience was back of.

This Section 39 of this ordinance I find to be controlling in regulating the storage of dynamite for any such length of time as this was kept in the harbor. These Sections, the first time I read them over, did some what confuse me and that confusion was added to by Mr. Griffith's clever argument that by implication the Charter did authorize the keeping

of dynamite elsewhere. But in reading them over again nearly all of them that he relies upon, instead of referring to dynamite, referred to any explosive, that is, the handling and transferring of any explosive. There are many kinds of explosives besides dynamite and where it requires that the crew shall be kept on board vessels in the harbor at all times where it has any explosives on board, [76] and where it prohibits smoking where there is any explosive being handled and where it requires that explosives shall not be handled by tackle or slid down gang-planks, these do not help us when we come to consider these sections that regulate the handling of dynamite.

Now, there seem to be three of those besides 39—that is, three that I think are particularly applicable. The one that gave me most concern was this one, “No person shall on any pier, or other structure, except on the Powder Dock or on powder boats, within Seattle Harbor, store or have on hand for sale, or sell, or keep any powder, ignition caps, dynamite or other explosive, either by day or night.” Now, construing that section in connection with the others I conclude that it is not applicable here for two reasons: first, that the word “keep,” that follows the word, “sell,” really means as though it read thus, “store or have on hand for sale, or keep for sale any powder, ignition caps or other like explosive.” I also conclude that it is not applicable because of the language proceeding. It says, “No person shall on any pier or other structure, except on the Powder Dock or on powder boats.” Section 39 requiring

powder boats to be kept at the Powder Dock—in order to cover the tow powder boats here mentioned beside the Powder Dock—it would be assumed that the powder boats in case the explosive was dynamite would be at the Powder Dock.

The other one, Mr. Rupp has pointed out wherein it is not applicable—that is, at any other pier in Seattle Harbor between sunset and sunrise. This was kept out there for seventeen days and nights. So it is not applicable. [77]

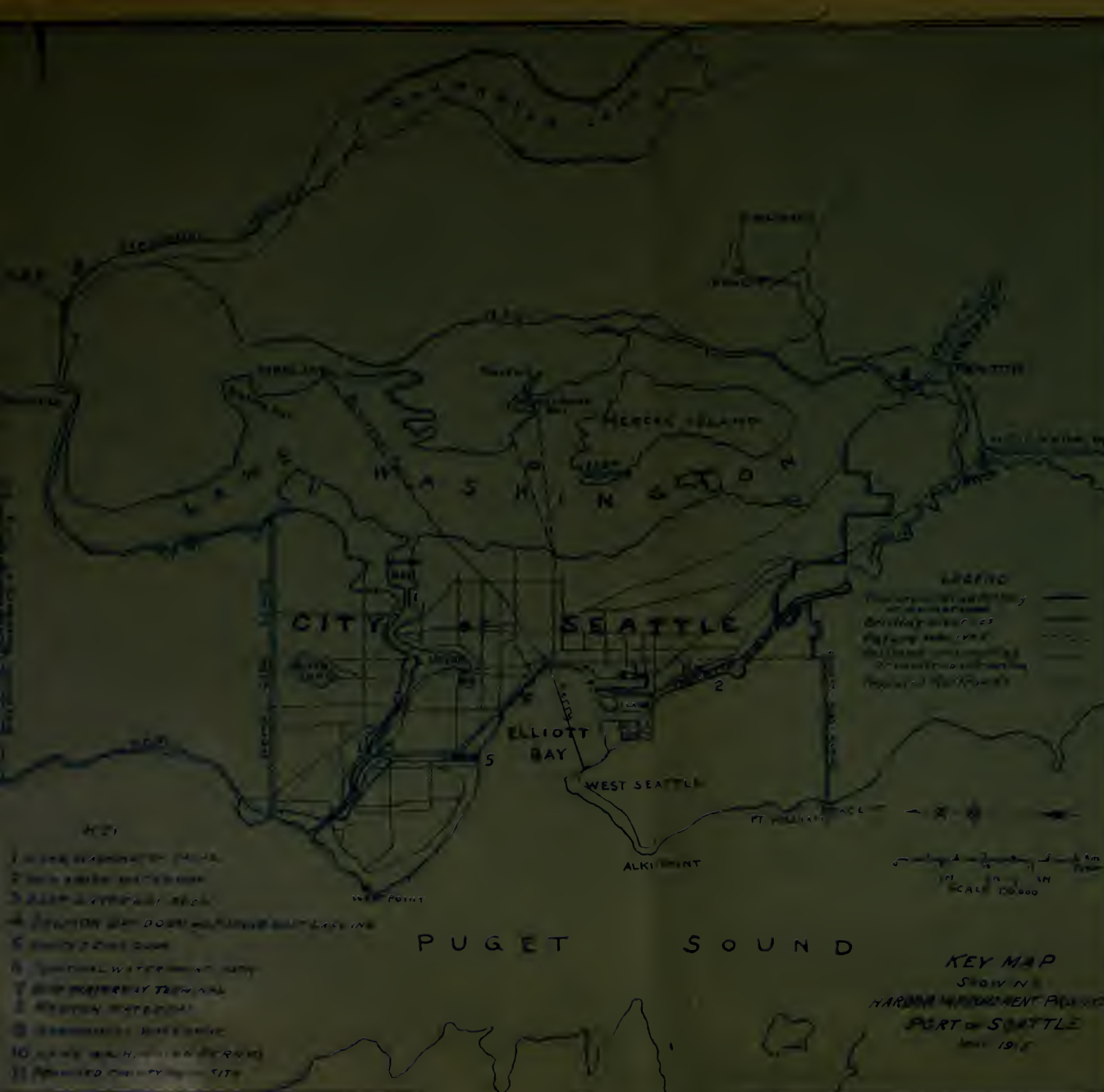
And the argument of Mr. Griffith regarding Section 39, which I will read, is hardly tenable. “The Harrison St. Municipal Pier is hereby designated for use temporarily as a powder dock.” This time it was designated temporarily. There is nothing shown but what that temporary period is still continuing. There has nothing been disclosed to induce the Court to think that it has expired in any way. There is no ordinance regarding it. It says, “And for use exclusively for the handling of powder, dynamite and other like explosives.”

Mr. GRIFFITH.—Handling, and not storing. Just handling.

The COURT.—“Handling and as a place for vessels carrying as cargo, or part cargo, such explosives.” Now, the word “exclusively” there covers both—covers the vessels when they carry such explosive, that is, dynamite. I hold that a nuisance was created and that the city is liable for the damage.

Whereupon counsel for defendant excepted to the above rulings of the Court, and the exception was allowed. [78]







NOTE

\* CITY HALL

⊙ HEADQUARTERS - PORT COMMISSION (2nd St. corner)

✦ FEDERAL BLDG (First Office 2nd)



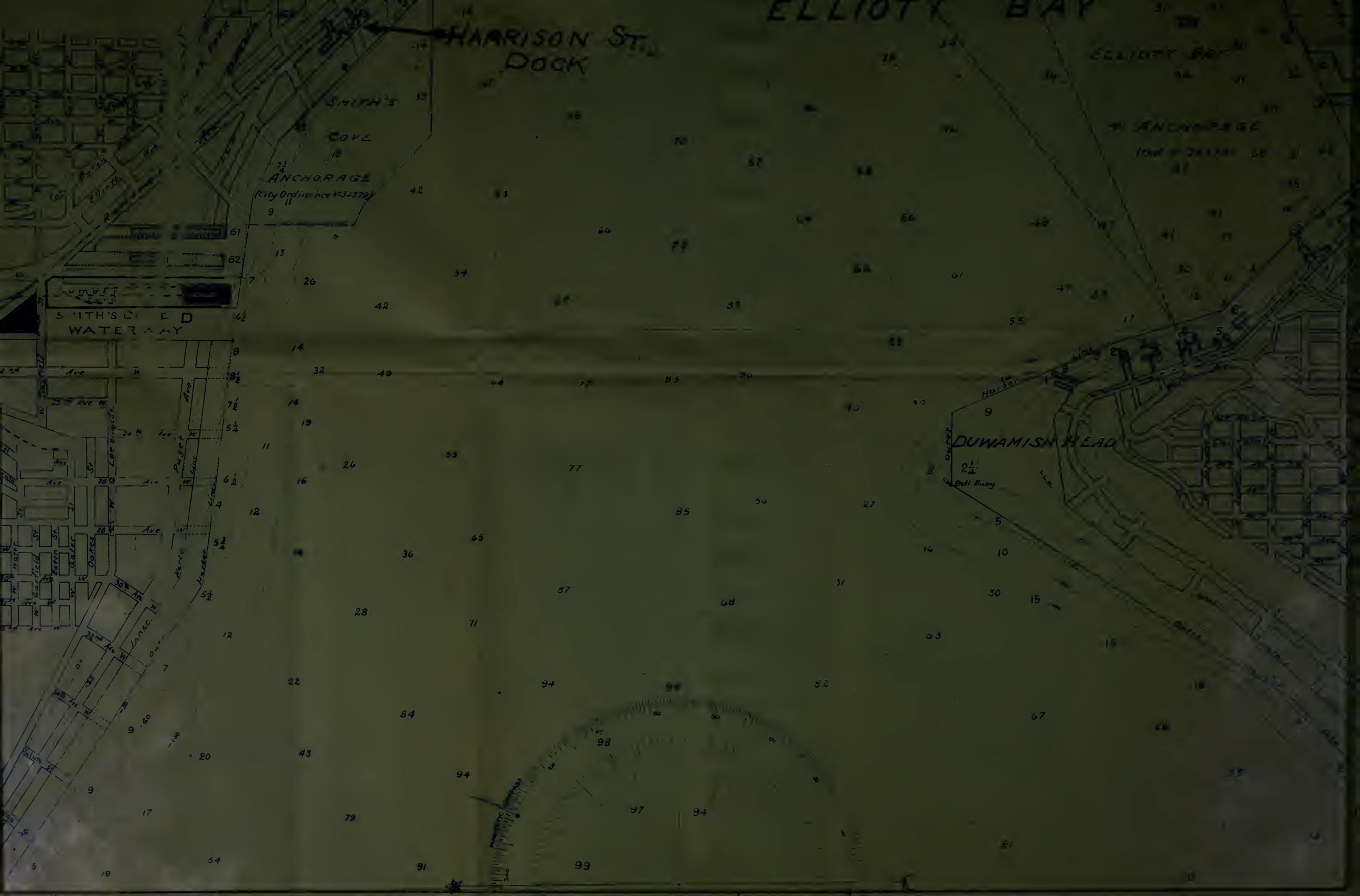














# SEATTLE

At the piers and wharves about Elliott Bay there is from 25 to 50 feet of water at low tide, the average at piers utilized by deep sea vessels is about 40 feet.

The East and West Waterway channels are dredged to 30 feet at low tide.

At the proposed Port of Seattle docks the depths will vary between 30 and 40 feet according to the uses to which the improvements are put.

PORT OF SEATTLE DOCKS		Frontage Linear Feet	
A	EAST WATERWAY TERMINALS	3020	
B	EAST WATERWAY	2600	
C	CENTRAL WATERFRONT	1780	
D	SMITH'S COVE WATERWAY	3700	
E	SALMON BAY WATERWAY	1700	
Total Dock Frontage		12800	
Classification of the New Dock Frontage		Deep Sea	9440
		Coastwise & Local	2420
		Motor Boats, etc.	940
Total (as above)		12800	

PLAINTIFFS EXHIBIT 1

Map of Water Front of City of Seattle.

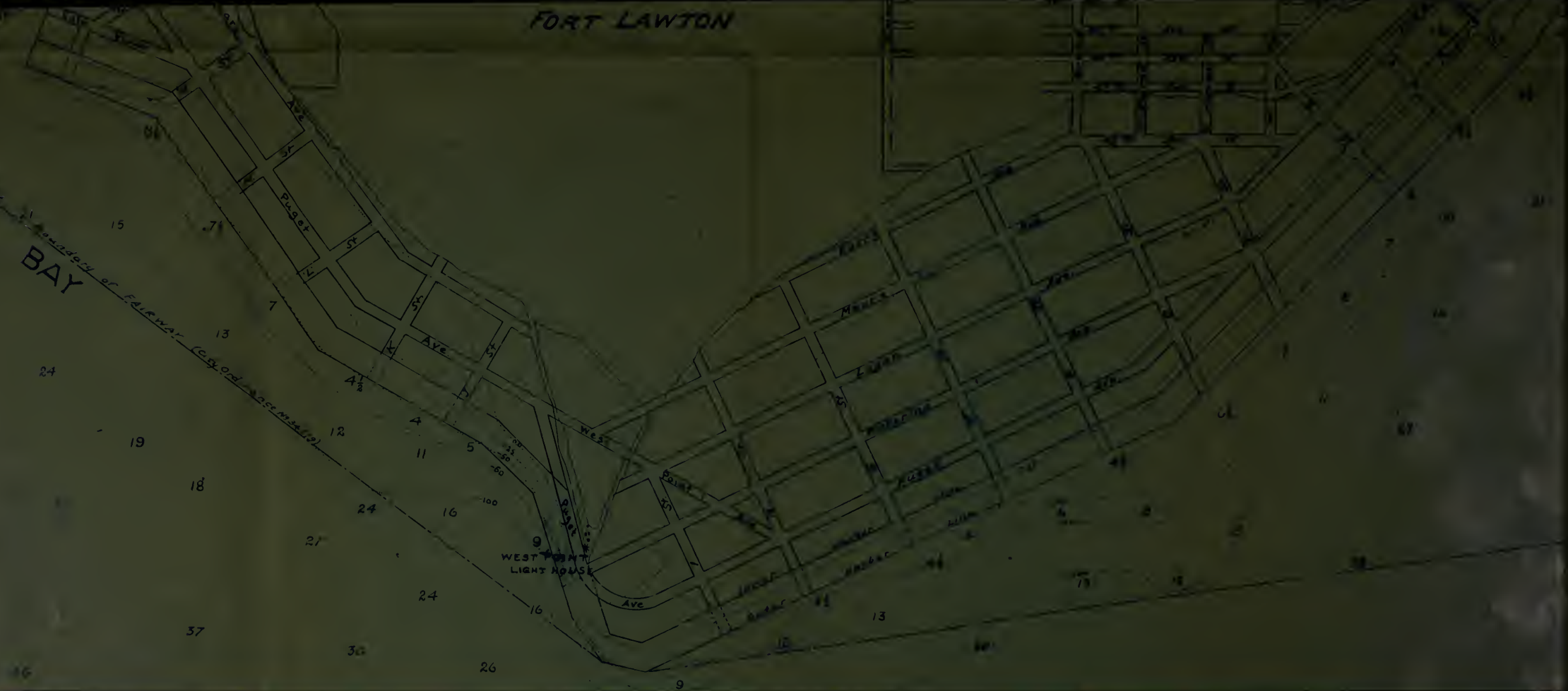


FORT LAWTON

SHILSHOLE  
BAY

Boundary of Fairway (City of Tacoma)

WEST POINT  
LIGHT HOUSE

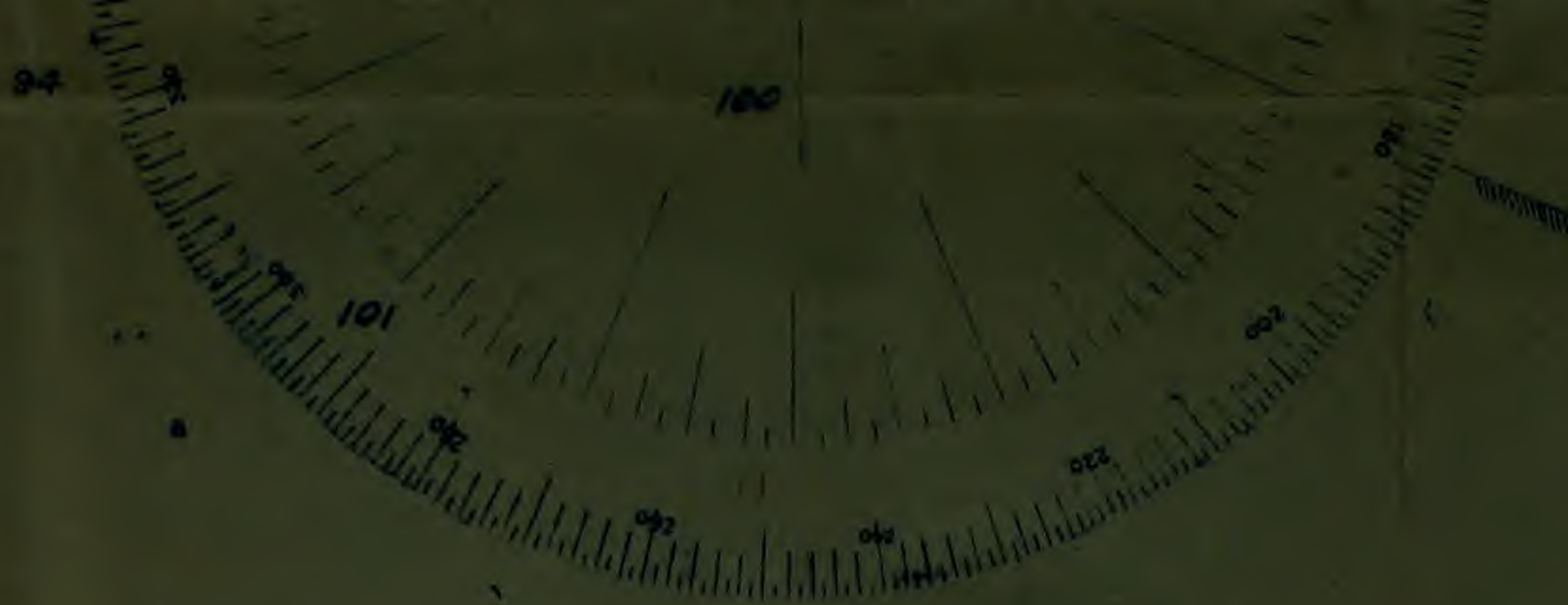




PUGET

SOUND

West Boundary of FAIRWAY (City Ordinance No 34375)



103

103

101

98

98

101

96

98

92

77

96

98

68

92

88

37

32

52

55

28

35



MAP OF WATER FRONT OF CITY OF SEATTLE

# PORT OF SEATTLE

## General Map

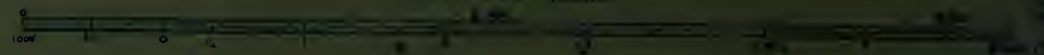
# Seattle Harbor

Showing Docks and  
Railway Connections

May 1915

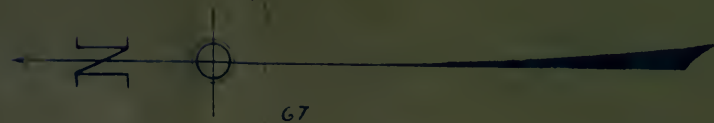
J. R. WEST  
Chief Engineer

Scale 1:1000





### SOUNDINGS IN FATHOMS


In the Harbor the soundings show the depths  
at 2 feet below mean lower low water.  
In Lake Union the soundings show the depths  
below high water mark of west side, or about  
25 feet above the Harbor plane.



Legend

Port of Seattle Improvements shown thus 

Unimproved Public Property shown thus 

Railroad Property 

44

67

ALKI POINT

\* ALKI POINT  
LIGHT HOUSE



**Exhibit "B"—Claim of Lloyds Plate Glass  
Insurance Co.**

**BEFORE THE COUNCIL OF THE CITY OF  
SEATTLE.**

In the Matter of the Claim of LLOYDS PLATE  
GLASS INS. CO., for Damages.

To the Honorable City Council of the City of Seattle,  
Washington:

COMES now Lloyds Plate Glass Insurance Com-  
pany and makes and files its claim for damages as  
follows:

**I.**

That claimant is now and was at all times herein-  
after mentioned and for more than one year last past  
has been a corporation organized and existing under  
the laws of the State of New York, with its residence  
and principal place of business at 63 William Street  
in the City of New York in said State, and qualified  
licensed and authorized to do business as an insur-  
ance company in the State of Washington, having  
complied with all the laws thereof relating to foreign  
insurance companies carrying on business in said  
state, and having duly designated, appointed and  
maintained during all of said time an agent resident  
in the City of Seattle, County of King, in said State.

**II.**

That prior to May 30, 1915, each of the persons,  
firms and corporations named in the schedule hereto  
attached, marked Exhibit "A" and hereby made a  
part of this statement, being [80] then the own-  
ers respectively of the glass windows, doors or tran-



soms located in the City of Seattle at the places in said exhibit designated by street numbers after the names of such persons, obtained from the claimant, in consideration of the payment of its established premiums, claimant's policy of insurance insuring said owner against loss by breakage of said glass in a sum equal to the amount set forth after each of said names, and said policies were in full force and effect upon May 30, 1915.

### III.

That for a long time prior to May 30, 1915, and up to and including said date, the harbor master, port warden, Chief of Fire Department and fire marshal of the City of Seattle, each and all negligently and carelessly directed, suffered and permitted to be and remain within the corporate limits of the City of Seattle, to wit, at a buoy owned and maintained by said City and located in the Harbor of Seattle, near the north end of Harbor Island therein, and without proper guard or protection, a certain scow loaded with about fifteen (15) tons of dynamite or other highly explosive substance, the exact name or nature of which is unknown to claimant, but the dangerous nature of which was well known to said officers and each of them.

### IV.

That the names of the owner or owners of said scow or of said explosive are unknown to claimant, but claimant is informed and believes that said explosive was shipped by the Hercules Powder Company, from San Francisco, California, upon the steamer "F. S. Loop," consigned to Baldwin Ship-

ping Company or Foerstner Hoettar Company at Vladivostok, Asiatic [81] Province of Russia, in care of J. T. Steeb & Co., of Tacoma, Washington, unloaded and transferred to said scow at Seattle for reshipment.

V.

That said scow so laden was permitted to be moored at said buoy by the direction and with the consent of said officers of the City of Seattle, in consideration of revenue derived or to be derived by said City in the way of fees and otherwise.

VI.

That on the 30th day of May, 1915, the said dynamite or other substance, by reason of some cause or causes to claimant unknown, exploded with such violence as to break the glass described in the attached Exhibit, and the same was thereby broken and lost, and the claimant was thereby rendered liable upon its said several policies of insurance in the amounts and to the persons set forth in said schedule.

VII.

That said loss and damage was not brought about by reason of any peril or cause excepted by said policies of insurance, and as required and provided by its said policies, the claimant has discharged its said liability by the payment of the value of the glass so broken and the cost of removing and replacing same, less salvage, or by replacing the same; and each of the said policy holders has heretofore by written instrument duly executed and delivered, sold, assigned and set over unto claimant all his right, title and interest in and to the claim or cause

of action against said City of Seattle in anywise arising or growing out of said explosion and the loss and damage thereby sustained, and thereby and by the provision of said policies, the claimant has been subrogated [82] to the rights and claims of its said policy holders and each of them in the premises.

### VIII.

That by reason of the negligence and want of care of the said City of Seattle, and its said officers, agents and servants as aforesaid, this claimant has been damaged in the total of the sums which it has paid in accordance with the terms of its said policies as set forth in said Exhibit "A," to wit, in the sum of \$5,749.43.

WHEREFORE, claimant prays that its said claim be audited and allowed by your honorable body and ordered paid out of the funds of said City of Seattle.

LLOYDS PLATE GLASS INSURANCE  
COMPANY,

By BOGLE, GRAVES, MERRITT &  
BOGLE,

Its Attorneys,

609-616 Central Building, Seattle. [83]

State of Washington,

County of King,—ss.

Lee D. Gilmer, being duly sworn on his oath, deposes and says: That the above-named claimant, Lloyds Plate Glass Insurance Company is a corporation organized under the laws of the State of New York and has no officer within the State of Washington: That Shay Bros. and Gilmer is a corporation



organized and existing under the laws of the State of Washington and affiant is an officer thereof, to wit, its treasurer and secretary. That the said Shay Bros. and Gilmer, a corporation is the duly appointed, qualified and acting agent of the said Lloyds Plate Glass Insurance Company in the State of Washington and is authorized to verify the foregoing statement of claim upon behalf of said claimant. Affiant has read the foregoing statement, including the exhibit therein referred to and thereto attached, knows the contents thereof and the same is true as he verily believes. That all the material facts therein set forth are within the personal knowledge of affiant and he makes this affidavit as the act of Shay Bros. and Gilmer upon behalf of said claimant and for the reasons above set out.

LEE D. GILMER.

Subscribed and sworn to before me this 29th day of June, 1915.

[Seal]

CARROLL A. GORDON,

Notary Public in and for the State of Washington,  
Residing at Seattle. [84]

J. M. Colman Co.	S. E. Corner 1st Ave. Upper front .....	\$185.00
	So. & Yesler Way	
	N. E. Corner Marion and 4th Ave.	1 plate door..... 8.65
Standard Furniture Co.	N. W. corner Second Ave. and Pine St.	6 windows on street floor 1 on mezzanine floor .....323.20
Bon Marche	S. W. Cor. Second Ave. & Pike St.	1 return window, 1 front window basement entrance ..... 27.90
Thos. M. Green	Stadaker Bldg., 5th Ave. between Pike and Union.	1 front and 1 return window ..... 76.20
Butler Hotel Company	N. W. Corner Second & James.	1 front window..... 49.50
H. N. Richmond	Virginia Hotel 4th & Cherry	1 front window..... 24.50
Albert Hansen	1919 Second Ave.	2 front, 1 return windows ..... 98.30
Herman & Blumenthal	120 Second Ave. So.	1 lower front, 1 return ..... 69.76
J. & F. McDermott (Bon Marche)	N. W. Cor. 2nd & James.	6 front windows mezzanine floor .....281.75
Shafer Bros.	92 Yesler Way	2 front and 2 return windows ..... 89.60
Hotel Savoy Co.	1212-16 2nd Ave.	Art Glass ..... 10.00
Men's Bootery	915 Second Ave.	Upper front window.. 8.70
		Sign ..... 6.00
Amos Brown Estate	613-621 Third Ave. 1100 1st Ave.	Return window ..... 18.50
	2nd & Seneca,	Front window..... 27.02
	1111 2nd Ave.	2 front windows..... 93.40
		5 front windows.....262.70
[85]		
Alhambra Bldg. Co.	S. E. Cor. Westlake & Pine.	1 return window..... 69.90
		1 front window..... 15.25
J. B. & J. F. O'Shea	511 Pine St.	3 return windows and 3 front windows...325.42
C. D. Mason	651 and 661 King St.	3 front windows.....101.60

Kinnear & Brawley	619 Second Ave. So.	2 return and 2 front windows .....209.70
G. Kinnear Co.	210 Occidental Ave.	1 front window ..... 11.15
S. Hyde	115 James St.	3 front windows.....146.20
Mission Liquor Co.	1322 Second Ave.	2 upper fronts..... 54.10
F. L. Heidrick & Co.	8th Ave. So. & Adams	2 front windows..... 63.00
Cowley Investment Co.	5th & Aloha	1 front window..... 22.33
G. Kinnear Co.	401 Pike St.	2 return windows.... 32.40
	403 Pike St.	1 front, 1 return win- dow, 1 transom.... 46.39
May Thagard	3rd & Union	1 front window..... 19.85
Outlet Clothing Co.	Occidental & Wash- ington Street.	2 windows ..... 95.90
Gatzert-Schwabach- er Land Co.	1513-19 5th Avenue.	3 windows ..... 84.00
Gatzert-Schwabach- er Land Co.	Occidental Ave. & Main Street.	3 windows ..... 48.50
Eva M. Aronson & Augusta M. Pres- ton	1119-1123 1st Ave.	3 windows ..... 41.19
Stengen & Ursdit- sky	82 West Main St.	2 windows ..... 9.23
Crawford & Wag- ner	402 Pine St.	1 window ..... 3.75
Shibata Co.	524 Main St.	2 windows ..... 34.63
Ida McDermid	20th Ave & Jackson St. S. W. Cor.	1 window ..... 29.44
Ale Meister	2203 1st Ave.	1 window ..... 13.52
Thomas Burke	216-218 Union St.	3 windows ..... 56.85
Spelger & Hurlbut	2nd Ave. & Union St.	2 windows ..... 59.30
Douglas & Berg	15th Ave & Madison	1 window ..... 19.90
[86]		
Hans Graf	539 Queen Anne Ave.	1 window ..... 8.40
Hans Graf	537 Queen Anne Ave.	1 window ..... 22.18
Thomas Burke	2nd Ave. & Marion	1 window ..... 51.10
Cascade Gas & Elec- tric Fix. Co.	1517-19 Second Ave.	6 windows .....173.10
W. H. Maud	1900-10 First Ave. 106-8 Stewart St.	2 windows ..... 38.50
Thomas Burke	912-16 Second Ave.	5 windows .....162.91
Thomas Burke	2nd Ave. & Marion St.	1 window ..... 16.70



Western Dry Goods	1st & King N/W Cor.	2 windows	19.28
Western Dry Goods	1st & King N/W Cor.	24 windows	620.75
Veith-Cammaek	2nd Ave. & James	2 windows	108.64
R. Sartori	312 2nd Ave. So.	9 windows	187.30
Oriental Amer. Bk.	6th & Main	3 windows	55.61
Crescent Mfg. Co.		3 windows	75.25
Muhl Store	616 Pike St.	1 window	25.01
Contractors Equip- ment Co.	522 1st Ave. So.	6 windows	116.55
Stone Brothers	Central Bldg. 3rd Ave.	4 windows	184.80
Business Property	& Marion St.	11 windows	463.85
Security Co.	Central Building.	4 windows	108.80
Business Property	Ry. Exchange Bldg.		
Security Co.			

[87]

### **Exhibit "C"—Notice of Claim and Itemized Account.**

To the City Council of the City of Seattle, a Municipal Corporation:

YOU ARE HEREBY NOTIFIED that as the result of an explosion of about fifteen tons of dynamite placed on a scow which was negligently permitted by said City of Seattle to be moored to a buoy at the north end of Harbor Island in the harbor at Seattle, Washington, and without proper guard or protection, the following described property, to wit: 1612-1614 and 1616 3d Ave., Seattle, Wash., was damaged on the morning of May 30, 1915, in a total sum of \$119.84; such damage consisting of breaking of glass windows and the expense of repairing such breakage and removing the broken glass, less salvage thereon. An itemized statement of the items making up said sum is hereto attached and made a part hereof.

The windows located as above described and broken by said explosion were insured by the under-

signed by Policy No. 334363, dated Dec. 11, 1914, and said policy was on said 30th day of May, 1915, in full force and effect.

That under and by the terms of said policy the undersigned was required to replace said windows or pay the value thereof, plus cost of replacement, to the insured; that the undersigned replaced said windows at the total cost of \$119.84, and that under and by the terms of said policy the undersigned is subrogated to the claim of the insured in said amount of \$119.84.

The undersigned now is and for more than one year last past has been a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business at No. 45 William Street [88] in New York City, N. Y.

[Seal] GLOBE INDEMNITY COMPANY.

By JOHN DAVIS & COMPANY,

Its General Agent.

By VINCENT D. MILLER,

Its Secretary.

State of Washington,

County of King,—ss.

Vincent D. Miller, being first duly sworn, on oath deposes and says: That he is secretary of John Davis & Company, a corporation, the general agent of the above-named claimant, and makes this verification on its behalf; that the above claim and the itemized account attached thereto and made a part thereof are true and correct.

VINCENT D. MILLER.

Subscribed and sworn to before me this 29th day of June, 1915.

[Seal]

JOHN P. GARVIN,  
Notary Public in and for the State of Washington,  
Residing at Seattle. [89]

C. C. BELKNAP GLASS COMPANY.

Sold to John Davis & Co.

Address, 807 2nd Ave., City.

Your Order No. ———. Our No. 4749.

Seattle, Wash. 6/6/15.

1—Plate 88 x105.....	\$331.00			
1—Plate 85 x120 .....	366.00			
1—Plate 63 x 80½ .....	183.00			
1—Plate 80½x102 .....	297.00	\$1177.00	90-5%	\$111.82
	Setting			11.00
				<hr/>
				\$122.82
Salvage—1—21x87.....				2.98
				<hr/>
				\$119.84

Set at 1612-14-16-3rd Ave.

[90]

(Back)

File No. 60987.

Claims of Globe Indemnity Co. Account Explosion.

Filed Jun. 29, 1915.

H. W. CARROLL,  
City Comptroller and Ex-officio City Clerk.  
By E. M. STREET,  
Deputy.

ACTION OF THE COUNCIL.

Referred to Finance Jul. 6, 1915.

Jul. 26, 1915. Rejected.

Report of Committee.

Mr. President:

Your Finance Committee to which was referred

the within Claim would respectfully report that we have considered the same and respectfully recommend that it be rejected.

HAAS,  
Chairman. [91]

**Exhibit "D"—Policy of Insurance, December 1, 1914, Globe Indemnity Co. of New York to Lennon's, a Corporation.**

GLOBE INDEMNITY COMPANY OF NEW YORK (herein called the Company) in consideration of the premium hereinafter provided,

**DOES HEREBY AGREE**

To indemnify the Assured against the breakage of any glass described in the schedule herein, which may occur during the term of this policy as defined herein.

The foregoing Agreement is made subject to the following conditions:

1. In the event of breakage of any of the glass mentioned in the schedule immediate notice thereof must be given to the Company with full particulars. The word "breakage" shall not include any defacement or damage other than a fracture extending through the entire thickness of the glass.

2. The Company at its option may replace any broken glass, or pay in cash the amount for which such broken glass is insured hereunder. If no such amount is specified in the schedule, then the actual market value at the time of breakage shall be deemed the amount insured. In either case, the broken glass shall belong to the Company.



3. Whenever necessary the Assured shall, at his expense, remove and replace any frames, fixtures, woodwork, or other obstructions to the replacing of the glass.

4. The Company shall be subrogated to all rights which the Assured may have against any person, partnership corporation or estate as respects any payment made under this policy, and the Assured shall execute all papers required to secure to the Company such rights.

5. The Company shall not be liable for—(1) any breakage resulting directly or indirectly from fire, earthquake, inundation, insurrection, riot, or any military or usurped power; [92] (2) any breakage resulting directly or indirectly from the blowing up of buildings when authorized by Civil Authorities; (3) any breakage or damage to any ornamentation on the glass, unless same is specifically described in the schedule of this policy, and then only when said breakage or damage is caused by the breakage of the glass on which it appears; (4) any breakage caused by the acts or operations of workmen engaged in making repairs, alterations or additions in or to the building or frames in which the glass is located; (5) any breakage of the glass while being glazed or before such glazing is completed in a workmanlike manner; (6) any breakage caused by the removal of any light of glass from its frame; (7) any loss or damage to the frames or sashes, or other than that of the glass.

6. This policy may be cancelled by the Company at any time by five days' written notice mailed to

the Assured at the address herein given as the location of premises, and the Assured shall be entitled to receive the unearned premium computed *pro rata*. This policy may also be cancelled by the Assured at any time by like notice in writing to the Company, and in such case the Company shall be entitled to the earned premium calculated on the basis of the short rate table printed hereon. The check of the Company or of its authorized representative for the return premium mailed to the Assured at the address herein given shall be a sufficient tender of payment thereof.

7. No change in the agreements, provisions or statements in the policy either printed or written, shall be valid unless made by endorsement signed by the President or the Secretary of the Company, nor shall notice to, or knowledge possessed by any representative or any other person be held [93] to waive, alter or extend any such agreements or conditions.

8. No assignment of interest under this policy shall bind the Company unless such assignment is consented to by endorsement signed by the President or the Secretary of the Company.

9. No person shall be considered a representative of the Company unless such person is authorized in writing as such representative by the President or the Secretary of the Company.

10. No action for the indemnity against loss provided for in this policy shall lie against the Company unless brought within twelve months after the right of action accrues, but if this condition is at variance

with any specific statutory provision of the State in which the accident occurs such specific statutory provision shall be substituted for this condition.

11. If insurance against breakage of any glass covered by this policy is carried in any other company the Assured shall not be entitled to recover from the Company a larger proportion of the entire loss than the amount hereby insured bears to the total amount of valid insurance.

### STATEMENTS.

1. The name of the Assured is Lennon's, a corporation.

2. The Premium for this Policy is Twenty-eight and no/100 Dollars \$28.00 and its term 12 months from twelve o'clock noon of the 1st day of December, 1914, to twelve o'clock noon of the 1st day of December, 1915, standard time at the place where this policy is countersigned.

3. Location of Premises No. 1106, Second Avenue, City of Seattle, State of Washington. [94]

4. Occupied for mercantile purposes.

5. The schedule of glass insured is as follows:

#1106 Second Avenue.

2 90 x 112 Arcade Returns (25% off list price)	8.23
2 46 x 90 Fronts	3.06
2 90 x 114 Returns	11.20
2 46 x 90 Fronts, back	3.06
2 18 x 90 Returns	1.20
1 32 x 64 Door	.76
1 18 x 36 Transom over door	.11

2	34 x 60	Sliding Doors, back window (not wired) .....	1.50
2	18 x 54	Mirrors on window post inside...	.50
1	46 x 90	Front .....	1.53
2	54 x 90	Sides .....	3.60
2	16 x 60	Doors .....	.50
1	20 x 36	Transom .....	.12
1	22 x 96	Top inside show case.....	1.17
1	32 x 96	Side front inside show case.....	1.71
2	20 x 32	Ends front inside show case.....	.30
2	12 x 46	Shelves inside show case.....	.27
2	14 x 46	Shelves inside show case.....	.33
4	20 x 28	Mirrors inside show case.....	.54
1	22 x 32	Mirrors inside (South wall front)	.11
2	16 x 30	Signs, Value \$15.00 each (chipped-gilded) .....	2.25
1	16 x 108	Signs, Value \$30.00.....	2.25
1	28 x 28	Signs, Value \$50.00 Chipped-gilded outside .....	3.75
5		Signs, Value \$12.00 each.....	9.00

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\$57.05

Less discount 29.05

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\$28.00

This slip is attached to and forms a part of policy No. G 334362, issued by the Globe Indemnity Co. to Lennon's A Corporation.

Dated December 1st, 1914.

(Signed) JOHN DAVIS & CO., INS. DEPT.,  
 Agents.  
 L. V. BREWER,  
 Manager.



In witness whereof the Globe Indemnity Company of New York has caused this policy to be signed by its President and its Secretary, but the same shall not be binding upon the Company until countersigned by a duly authorized representative of the Company.

HENRY W. EATON,  
President.

A. DUNCAN REID,  
Secretary.

Countersigned at Seattle, Wash., this 1st day of December, 1914.

JOHN DAVIS & CO., INS. DEPT.,  
Authorized Representative.

L. V. BREWER,  
Manager. [95]

(On back of Policy appears the following:)

Globe Indemnity Company  
of New York.

Glass Policy

G334362

Issued to

Lennon's a Corporation

1106 Second Ave.

Please Read This Policy.

In Case of Loss, Notify Agent  
or Company Immediately.

John Davis & Co. Agents  
Seattle, Wash.

Globe Indemnity Company.

Home Office:

45 William Street,  
New York City. [96]

**Exhibit "E"—Statement of Policies of Insurance,  
etc.**

Policy No.	Assured.	Location.	Date of Issue.	Amount of Claim.
334363	Frank McDermott	1625-27—4th	12-11-14	100.22
334391	Isaac Cooper	224 Pike	3-10-15	22.71
334326	Edgar G. Ames	S. W. Cor. 2nd & Stewart.	8-11-14	236.67
334362	Lennons, Inc.	1106—2nd Ave.	12-1-14	53.65
334368	Struve Estate	1014—1st Ave.	1-2-15	216.92
330453	University St. Imp. Co.	1216-22—3rd Ave.	6-1-15	310.11
334383	Franklin E. Robinson	S. E. Cor. 1st & Battery	4-8-15	117.95
334341	George W. Stetson	216—2nd Ave. South	10-15-14	8.31
334342	O. F. Fineh	1218 Howell St.	10-29-14	17.72
334346	F. K. Struve & John Davis	321 Pine Street	10-14-14	18.29
334372	Est. Chas. McDonald	807 2nd Avenue	2-24-15	15.80
334377	M. Prager & Co.	1207—2nd Avenue	3-22-15	25.43
334376	Aubrey Levy	1401 E Madison St.	3-21-15	9.46
334382	Hardman Estate	S. E. Cor. 7th & Union	4-1-15	6.45
334365	Miller Inv. Co.			
334361	J. Friedman & Son	1010—1st Ave.	1-7-15	15.13
		903—1st Avenue	12-29-14	87.45
334379	John C. Goodrich	109 Prefontaine Pl.	3-17-15	51.72
334360	M. G. Jeffries	1913-17—1st Ave.	12-16-14	59.91
330468	D. Aronson	906 2nd Ave.	8-1-14	36.17
334402	C. Malmö	716 Dearborn St.	5-5-15	30.13
334330	Gordon Voorhies	2119-23 2nd Ave.	9-15-14	29.24
334327	Joseph Hoeslich	1706-10 Yesler Way	9-16-14	46.38
334400	E. F. Sweeney	904 Second Avenue	5-7-15	54.14
330451	J. W. Fales Paper Co.	1018—4th Ave. So.	6-19-14	41.85
330452	Amherst Inv. Co.	1610—2nd Avenue	6-30-14	18.43
334340	F. Stein	4754 California Ave.	10-3-14	12.36
334381	Stander Inv. Co.	1020-22—1st Ave.	4-8-15	105.98
	A. G. Spaulding & Bros.	711—2nd Avenue	8-1-14	56.97
334363	Frank McDermott	1612-14-16 3rd Ave.	12-11-14	119.84
334373	Mer. & Urban Inv. Co.	708-16—1st Ave.	2-4-15	353.92
334369	J. H. Noney	1512—1st Avenue	12-28-14	52.65
334344	Wa Chong Co. Inc.	506-10 Maynard Ave.	10-17-14	74.92

\$2406.88

**Order Settling Bill of Exceptions.**

BE IT REMEMBERED that on this day, the time fixed for the settlement of the bill of exceptions in the above-entitled cause, the plaintiff appearing by Hughes, McMicken, Ramsey & Rupp; Bogle Graves, Merritt & Bogle; Flick & Paul, the defendant appearing by Hugh M. Caldwell, Corporation Counsel, and Frank S. Griffith, his assistant, and it appearing to the Court that said bill of exceptions contains the ruling made by the Court during the course of the trial, duly excepted to, and exceptions allowed by the Court, together with so much of the testimony and exhibits as tends to explain the objections and exceptions, that this bill of exceptions was seasonably drawn and tendered in due time by the defendant, the City of Seattle, is in legal form, and is conformable to the truth; therefore the above and foregoing bill of exceptions is by me hereby settled, and in authentication thereof is by me signed in open court this 10th day of January, 1918.

E. E. CUSHMAN,

Judge.

Service of the within Bill of Exceptions by delivery of a copy to the undersigned is hereby acknowledged this 10th day of January, 1918.

HUGHES, McMICKEN, RAMSEY & RUPP,

Of Attorneys for Plaintiff.

[Endorsed]: Bill of Exceptions. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Jan. 10, 1918. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [98]

*In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

No. 3561.—AT LAW.

LLOYD'S PLATE GLASS INSURANCE COM-  
PANY, a Corporation,

Plaintiff,

vs.

THE CITY OF SEATTLE, a Municipal Corpora-  
tion,

Defendant.

### **Assignment of Errors.**

Comes now the City of Seattle, plaintiff in error in the above-numbered and entitled cause, and in connection with its petition for a writ of error in this cause, assigns the following errors, which plaintiff in error avers occurred on the trial thereof, and on which it relies to reverse the judgment entered herein, as appears of record.

#### **I.**

The Court committed error in admitting Plaintiff's Exhibit 3, being a certified copy of the claim of the Lloyd's Plate Glass Insurance Company, claimed to have been filed with the City of Seattle, as a prerequisite to the commencement of this action.

#### **II.**

The Court committed error in admitting in evidence the claim of the Globe Indemnity Insurance Company claimed to have been filed with the City of



Seattle, as a prerequisite to the commencement of this action.

### III.

The Court committed error in holding the claim filed by the plaintiff, Lloyd's Plate Glass Insurance Company, sufficient in law.

### IV.

The Court committed error in holding the claim filed by the Globe Indemnity Insurance Company and assigned to plaintiff as sufficient in law. [99]

### V.

The Court committed error in denying defendant's motion for nonsuit urged before the Court at the close of plaintiff's testimony that the evidence of the plaintiff was insufficient to justify any recovery.

### VI.

The Court committed error in holding, as a matter of law, that the city had a right to establish buoys in Seattle Harbor.

### VII.

The Court committed error in holding that the nitro-glycerine gelatin content shipped coastwise from San Francisco, destination, port of Vladivostok, Asiatic Russia, and awaiting transfer at Seattle, was in storage by the City of Seattle.

### VIII.

The Court committed error in holding that Section 39 of Ordinance No. 34,379 of the City of Seattle was controlling in regulating the transfer or transshipment of dynamite destined for transshipment foreign.

IX.

The Court committed error in holding that because the word "dynamite" was not used in Section 38 of Ordinance No. 34,379 or in any of its subdivisions, it made them inapplicable, notwithstanding the words "any explosive," and "every vessel carrying a cargo of explosives in any form, while lying at anchor or at a city buoy, or alongside the powder dock," were used in said Section 38.

X.

The Court committed error in holding as a matter of law that Section 39 of Ordinance No. 34,379 of the City of Seattle prohibited the transfer of dynamite, or the anchorage of ships [100] carrying dynamite, at any other place than the powder dock, notwithstanding section 38 of said ordinance provided that every vessel carrying a cargo of explosives in any form may lie at anchor in the harbor or at a buoy or at the powder dock.

XI.

The Court committed error in holding that the act of the port warden was in violation of the fire ordinance No. 29,324 and thereby the permitting the anchorage of a vessel loaded with dynamite at a buoy in Seattle Harbor created a nuisance.

XII.

The Court committed error in holding that anchoring a scow loaded with dynamite, an article of commerce, at buoy No. 1 in Seattle Harbor created a nuisance.

XIII.

The Court committed error in determining that

the City of Seattle was liable for the results of an explosion of dynamite on a scow anchored to a buoy in Seattle Harbor over which it had no control, the cause of the explosion not being charged to the city.

## XIV.

The Court committed error in refusing to dismiss this action on the motion of the defendant at the close of all the testimony.

## XV.

The Court committed error in overruling the defendant's demurrer to the amended complaint of the plaintiff.

WHEREFORE, plaintiff in error prays that the judgment of said Court be reversed, and that the United States Circuit Court of Appeals may cause further to be done therein to correct the error what of right and according to the laws and customs of the United States should be done.

HUGH M. CALDWELL,

Corporation Counsel.

FRANK S. GRIFFITH,

Assistant Attorneys for Plaintiff in Error. [101]

Service of the within Assignment of Errors by delivery of a copy to the undersigned is hereby acknowledged this 10th day of Jan., 1918.

FLICK & PAUL,

BOGLE, GRAVES, MERRITT & BOGLE,  
HUGHES, McMICKEN, RAMSEY &  
RUPP,

Attorneys for Plaintiff.

[Endorsed]: Assignment of Errors. Filed in the  
U. S. District Court, Western Dist. of Washington,

Northern Division. Jan. 10, 1918. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [102]

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*In the District Court of the United States for the  
Western District of Washington, Northern Division.*

No. 3561.

LLOYD'S PLATE GLASS INSURANCE COMPANY, a Corporation,

Plaintiff,

vs.

THE CITY OF SEATTLE, a Municipal Corporation,

Defendant.

**Petition for Writ of Error.**

To the Hon. E. E. CUSHMAN, Judge of the District Court Aforesaid:

Comes now the City of Seattle, by Hugh M. Caldwell and Frank S. Griffith, its attorneys, and respectfully shows that on the 10th day of January, A. D. 1918, the Court found against your petitioner and in favor of the plaintiff and thereafter a final judgment was entered on the 10th day of January, 1918, against your petitioner, the defendant. Your petitioner feeling itself aggrieved by the said finding and judgment entered thereon as aforesaid, herewith petitions the Court for an order allowing it to prosecute a writ of error to the Circuit Court of Appeals of the United States for the 9th Circuit,



under the laws of the United States in such cases made and provided.

WHEREFORE, the premises considered, your petitioner prays that a writ of error do issue that an appeal in this behalf to the United States Court of Appeals aforesaid sitting at San Francisco for said Circuit, for the correction of the errors complained of and herewith assigned, be allowed, and that an order be made fixing the amount of security to be given by plaintiff in error, conditioned as the law directs, and upon giving such bond as may be required that all further proceedings may be suspended until the determination of [103] of said writ of error by the Circuit Court of Appeals.

HUGH M. CALDWELL,  
Corporation Counsel.

FRANK S. GRIFFITH,  
Assistant.

Attorneys for Petitioner in Error.

Service of the within Pet. for Writ of Error by delivery of a copy to the undersigned is hereby acknowledged this 10th day of Jan., 1918.

HUGHES, McMICKEN, RAMSEY & RUPP,  
Of Attorneys for Plaintiff.

[Endorsed]: Petition for Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Jan. 10, 1918. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [104]

*In the District Court of the United States for the  
Western District of Washington, Northern  
Division.*

No. 3561.

LLOYD'S PLATE GLASS INSURANCE COM-  
PANY, a Corporation,

Plaintiff,

vs.

THE CITY OF SEATTLE, a Municipal Corpora-  
tion,

Defendant.

**Order Granting Writ of Error.**

This matter coming on for hearing upon the petition of the defendant for a writ of error, and the Court having considered said petition and being duly advised.

IT IS ORDERED that a writ of error be granted and that the defendant give bond in the sum of One Thousand and no/100 Dollars conditioned as the law directs.

Done in open court this 10th day of January, 1918.

EDWARD E. CUSHMAN,

Judge.

Service of the within Order Granting Writ of Error by delivery of a copy to the undersigned is hereby acknowledged this 8th day of January, 1918.

HUGHES, McMICKEN, RAMSEY &  
RUPP,

Of Attorneys for Plaintiff.

[Endorsed]: Order Granting Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Jan. 10, 1918. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [105]

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*In the District Court of the United States for the  
Western District of Washington, Northern  
Division.*

No. 3561—AT LAW.

LLOYD'S PLATE GLASS INSURANCE COM-  
PANY, a Corporation,

Plaintiff,

vs.

THE CITY OF SEATTLE, a Municipal Corpora-  
tion,

Defendant.

**Writ of Error Bond.**

KNOW ALL MEN BY THESE PRESENTS:  
That we, the City of Seattle, as principal, and  
Fidelity and Deposit Company of Maryland as  
surety, are held and firmly bound unto Lloyd's Plate  
Glass Insurance Company, a corporation, in the full  
and just sum of One Thousand and no/100 Dollars  
to be paid to the said Lloyd's Plate Glass Insurance  
Company, its attorneys, successors, administrators,  
executors or assigns, to which payment, well and  
truly to be made, we bind ourselves, our successors,

assigns, executors and administrators jointly and severally by these presents.

Signed and dated this the 10th day of January, A. D. 1918.

WHEREAS, lately at a regular term of the District Court of the United States for the Western District of Washington, Northern Division, sitting at Seattle in said district, in a suit pending in said court between Lloyd's Plate Glass Insurance Company as plaintiff, and the City of Seattle as defendant, Cause No. 3561 on the law docket of said court, final judgment was rendered against the said defendant for the sum of Eight Thousand One Hundred Fifty-six and  $31/100$  Dollars, with interest thereon at the rate of 6%, and the said defendant has obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment of the said court in the aforesaid suit, and a citation directed to the said Lloyd's [106] Plate Glass Insurance Company, defendant in error, citing it to be and appear before the United States Circuit Court of Appeals for the 9th Circuit, to be holden at San Francisco in the State of California, according to law, within thirty (30) days from the date hereof;

Now, the condition of the above obligation is such that if the said City of Seattle, plaintiff in error, shall prosecute its writ of error to effect and answer all damages and costs if it fails to make its plea good,



then the above obligation to be void, else to remain in full force and virtue.

THE CITY OF SEATTLE.

H. C. GILL,

Mayor, Principal.

FIDELITY AND DEPOSIT COMPANY  
OF MARYLAND.

By J. A. CATHCART,

Attorney in Fact.

[Seal]

Attest: A. W. WHALLEY,

Agent.

Attest: J. P. AGNEW,

Deputy City Comptroller and ex-officio City Clerk.

Approved this the 10th day of January, A. D. 1918.

EDWARD E. CUSHMAN,

Judge.

[Endorsed]: Writ of Error Bond. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Jan. 10, 1918. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [107]

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*In the District Court of the United States for the  
Western District of Washington, Northern  
Division.*

No. 3561.

LLOYD'S PLATE GLASS INSURANCE COM-  
PANY, a Corporation,

Plaintiff,

vs.

THE CITY OF SEATTLE, a Municipal Corpora-  
tion,

Defendant.

**Writ of Error (Copy).**

United States of America,—ss.

The President of the United States, WOODROW WILSON, to the Hon. Judge of the District Court of the United States for the Western District of Washington, Northern Division, GREETING:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, between the City of Seattle, plaintiff in error, and Lloyd's Plate Glass Insurance Company, defendant in error, a manifest error has happened to the damage of the City of Seattle, plaintiff in error, as by said complaint appears, and we being willing that error, if any hath been, should be corrected and full and speedy justice be done to the parties aforesaid in this behalf to command you, if judgment be therein given, that under your seal you send the record and proceedings aforesaid with all things concerning the same, to the United States Circuit Court of Appeals for the 9th Circuit, together with this writ, so that you have the same at San Francisco in the State of California where said court is sitting within thirty (30) days from the date hereof in the said Circuit Court of Appeals to be then and there held, and the record and proceedings aforesaid being inspected the said United States Court of Appeals may cause further to be done therein to correct the error what of right and according to the law and customs of the United States should be done. [108]

WITNESS The Hon. EDWARD D. WHITE,  
Chief Justice of the United States this the 8th day of  
January, A. D. 1918.

FRANK L. CROSBY,  
Clerk of the United States District Court for the  
Western District of Washington, Northern Di-  
vision.

Allowed this the 10th day of January, A. D. 1918.

[Seal]

EDWARD E. CUSHMAN,

United States Judge.

Service of the within writ of error by delivery of  
a copy to the undersigned is hereby acknowledged  
this 10th day of January, 1918.

HUGHES, McMICKEN, RAMSEY & RUPP,

Attorneys for Plaintiff.

[Endorsed]: Writ of Error. Filed in the U. S.  
District Court, Western Dist. of Washington, Nor-  
thern Division, Jan. 10, 1918. Frank L. Crosby,  
Clerk. By Ed M. Lakin, Deputy. [109]

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*In the District Court of the United States for the  
Western District of Washington, Northern  
Division.*

No. 3561.

LLOYD'S PLATE GLASS INSURANCE COM-  
PANY, a Corporation,

Plaintiff,

vs.

THE CITY OF SEATTLE, a Municipal Corpora-  
tion,

Defendant.

**Citation on Writ of Error (Copy).**

United States of America,—ss.

To Lloyd's Plate Glass Insurance Company,  
**GREETING:**

You are hereby cited and admonished to be and appear at a term of the United States Circuit Court of Appeals to be held in the City of San Francisco for the 9th Circuit, on the 4th day of March, 1918, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the Western District of Washington, Northern Division, wherein Lloyd's Plate Glass Insurance Company, a corporation, is plaintiff, and the City of Seattle is defendant and petitioner in writ of error, to show cause, if any there be, why the decree in said writ of error should not be corrected and speedy justice to the parties in that behalf.

WITNESS the Hon. EDWARD D. WHITE,  
Chief Justice of the United States, this 8th day of  
January, 1918.

[Seal]

EDWARD E. CUSHMAN,

Judge.

Service of the within Citation by delivery of a copy to the undersigned is hereby acknowledged this 8th day of January, 1918.

HUGHES, McMICKEN, RAMSEY & RUPP,

Of Attorneys for Plaintiff.

[Endorsed]: Citation. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Jan. 10, 1918. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [110]



*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

No. —.

THE CITY OF SEATTLE, a Municipal Corporation,

Plaintiff in Error.

vs.

LLOYD'S PLATE GLASS INSURANCE COMPANY, a Corporation,

Defendant in Error.

**Stipulation as to Printing of Transcript of Record.**

For the sake of brevity and to avoid unnecessary expense, IT IS HEREBY STIPULATED, between the parties hereto, that in the typewritten and printed transcript of the record of the above-entitled cause there shall be omitted from all pleadings, orders and proceedings (other than the amended complaint, demurrer thereto, order overruling said demurrer, answer, reply, petition for new trial, order overruling the said petition, general finding of fact, and judgment) the title of the court and the number and title of the cause.

**IT IS FURTHER STIPULATED:**

That exhibits "A" and "F" attached to the amended complaint are the same as exhibit "B" attached to the bill of exceptions, and that said exhibits "A" and "F" need not be typewritten or printed as a part of the amended complaint, but solely as exhibit "B" of the bill of exceptions.

That exhibit "G" attached to the amended complaint is the same as exhibit "C" attached to the bill of exceptions, and that it will only be necessary to print and typewrite exhibit "C" attached to the bill of exceptions.

That exhibit "E" attached to the amended complaint is the same as exhibit "D" attached to the bill of exceptions, [111] and that it will only be necessary to print and typewrite exhibit "D" attached to the bill of exceptions.

That exhibit "B" attached to the amended complaint is the same as exhibit "E" attached to the bill of exceptions, and that it will only be necessary to print and typewrite exhibit "E" attached to the bill of exceptions.

That exhibit "C" attached to the amended complaint is made a part of the bill of exceptions by reference, same being a contract of assignment between Globe Indemnity Company and Lloyds Plate Glass Insurance Company, and that in printing and typewriting the record it will be necessary to print and typewrite only exhibit "C" as attached to the amended complaint.

Dated. Seattle, Washington, January 10, 1918.

HUGH M. CALDWELL,

FRANK S. GRIFFITH,

Attorneys for Plaintiff in Error.

BOGLE, GRAVES, MERRITT &

BOGLE,

FLICK & PAUL,

HUGHES, McMICKEN, RAMSEY &

RUPP,

Attorneys for Defendant in Error.

[Endorsed]: Stipulation as to Printing Record.  
Filed in the U. S. District Court, Western Dist. of  
Washington, Northern Division, Jan. 10, 1918.  
Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.  
[112]

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*In the District Court of the United States for the  
Western District of Washington, Northern  
Division.*

No. 3561.

LLOYD'S PLATE GLASS INSURANCE COM-  
PANY, a Corporation,

Plaintiff,

vs.

THE CITY OF SEATTLE, a Municipal Corpora-  
tion,

Defendant.

**Stipulation as to Record.**

IT IS HEREBY STIPULATED, between the  
parties hereto, that the clerk of this Court, in making  
his return to the writ of error herein, shall include  
therein the following:

Amended complaint.

Demurrer to amended complaint.

Order overruling demurrer to amended complaint.

Answer.

Demurrer to answer.

Reply.

General finding of fact.

Judgment.

Petition for new trial.

Order denying said petition for new trial.

Bill of exceptions.

Assignment of errors.

Petition for order allowing writ of error.

Order granting writ of error; and fixing amount of bond.

Bond.

Writ of Error.

Copy of writ of error lodged with clerk for defendant in error. [113]

Original citation and acceptance of service thereof.

Copy of citation lodged with clerk for defendant in error.

Stipulation as to printing transcript of record.

Stipulation as to the record.

Which comprise all the papers, exhibits, depositions and other proceedings which are necessary to the hearing of said cause upon such writ of error in the United States Circuit Court of Appeals for the Ninth Circuit, and that no other papers or proceedings than those above mentioned need be included by the clerk of said court in making up his return to said writ of error as a part of such record; provided, however, that either party may supplement the record by adding thereto any matter of record not hereinbefore mentioned.



Dated January 10th, 1918.

BOGLE, GRAVES, MERRITT &  
BOGLE,  
FLICK & PAUL,  
HUGHES, McMICKEN, RAMSEY &  
RUPP,

Attorneys for Plaintiff.

HUGH M. CALDWELL,  
FRANK S. GRIFFITH,

Attorneys for Defendant.

We waive the provisions of the Act approved February 13, 1911, and direct that you forward type-written transcript to the Circuit Court of Appeals for printing as provided under Rule 105 of this Court.

HUGH M. CALDWELL,  
FRANK L. GRIFFITH,

Attorneys for Defendant.

[Endorsed]: Stipulation as to record. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Jan. 10, 1918. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [114]

*United States District Court, Western District of  
Washington, Northern Division.*

No. 3561.

LLOYD'S PLATE GLASS INSURANCE COM-  
PANY, a Corporation,

Plaintiff,

vs.

THE CITY OF SEATTLE,

Defendant.

**Certificate of Clerk U. S. District Court to Transcript  
of Record, etc.**

United States of America,  
Western District of Washington,—ss.

I, Frank L. Crosby, clerk of the United States District Court, for the Western District of Washington, do hereby certify that this typewritten record numbered from 1 to 121, inclusive, is a full, true, correct and complete copy of so much of the record, papers, and other proceedings in the above and foregoing entitled cause, as are necessary to the hearing of said cause on writ of error therein in the United States Circuit Court of Appeals for the Ninth Circuit, and as is stipulated for by counsel of record herein, as the same remain of record and on file in the office of the clerk of said District Court, and that the same constitute the **record** on return to said writ of error herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit

Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the plaintiff in error for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit: [115]

Clerk's fee (Sec. 828, R. S. U. S.), for making record, certificate or return, 304 folios at 15¢ .....	\$45.60
Certificate of Clerk to transcript of record, folios at 15¢ .....	.60
Seal to said Certificate .....	.20
	<hr/>
	\$46.40

I hereby certify that the above cost for preparing and certifying record amounting to \$46.40, has been paid to me by counsel for plaintiff in error.

I further certify that I hereto attach and herewith transmit the original Writ of Error and original Citation issued in this cause.

IN WITNESS WHEREOF I have hereto set my hand and affixed the seal of said District Court at Seattle, in said District, this 15th day of January, 1918.

[Seal]

FRANK L. CROSBY,

Clerk United States District Court. [116]

*In the District Court of the United States for the  
Western District of Washington, Northern Division.*

No. 3561.

LLOYD'S PLATE GLASS INSURANCE COM-  
PANY, a Corporation,

Plaintiff,

vs.

THE CITY OF SEATTLE, a Municipal Corpora-  
tion,

Defendant.

**Writ of Error (Original).**

United States of America,—ss.

The President of the United States, WOODROW  
WILSON, to the Hon. Judge of the District  
Court of the United States for the Western  
District of Washington, Northern Division,  
GREETING:

Because in the record and proceedings, as also in  
the rendition of the judgment of a plea which is in  
the said District Court before you, between the City  
of Seattle, plaintiff in error, and Lloyd's Plate Glass  
Insurance Company, defendant in error, a manifest  
error has happened to the damage of the City of  
Seattle, plaintiff in error, as by said complaint ap-  
pears, and we being willing that error, if any hath  
been, should be corrected and full and speedy justice  
be done to the parties aforesaid in this behalf to com-  
mand you, if judgment be therein given, that under



your seal you send the record and proceedings aforesaid with all things concerning the same, to the United States Circuit Court of Appeals for the 9th Circuit, together with this writ, so that you have the same at San Francisco in the State of California where said court is sitting, within thirty (30) days from the date hereof in the said Circuit Court of Appeals to be then and there held, and the record and proceedings aforesaid being inspected the said United States Court of Appeals may cause further to be done therein to correct the error what of right and according to the law and customs of the United [117] States should be done.

WITNESS the Hon. EDWARD D. WHITE,  
Chief Justice of the United States this the 8th day  
of January, A. D. 1918.

FRANK L. CROSBY,  
Clerk of the United States District Court for the  
Western District of Washington, Northern Division.

Allowed this the 10th day of January, A. D. 1918.

[Seal]

EDWARD E. CUSHMAN,

United States Judge. [118]

[Endorsed]: No. 3561. In the District Court of the United States for the Western District of Washington, Northern Division. Lloyd's Plate Glass Insurance Company, a Corporation, Plaintiff, vs. The City of Seattle, a Municipal Corporation, Defendant. Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Jan. 10, 1918. Frank L. Crosby, Clerk. By. Ed M. Lakin, Deputy.

Service of the within writ of error by delivery of a copy to the undersigned is hereby acknowledged this 10th day of January, 1918.

HUGHES, McMICKEN, RAMSEY & RUPP,  
Of Attorneys for Plaintiff. [119]

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*In the District Court of the United States for the  
Western District of Washington, Northern Division.*

No. 3561.

LLOYD'S PLATE GLASS INSURANCE COM-  
PANY, a Corporation,

Plaintiff,

vs.

THE CITY OF SEATTLE, a Municipal Corpora-  
tion,

Defendant.

**Citation on Writ of Error (Original).**

United States of America,—ss.

To Lloyd's Plate Glass Insurance Company, GREET-  
ING:

You are hereby cited and admonished to be and appear at a term of the United States Circuit Court of Appeals to be held in the City of San Francisco for the 9th Circuit, on the 4th day of March, 1918, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the Western District of Washington, Northern Division, wherein Lloyd's Plate Glass Insurance Company, a

corporation, is plaintiff, and the City of Seattle is defendant and petitioner in writ of error, to show cause, if any there be, why the decree in said writ of error should not be corrected and speedy justice to the parties in that behalf.

WITNESS the Hon. EDWARD D. WHITE, Chief Justice of the United States, this 10th day of January, 1918.

[Seal]

EDWARD E. CUSHMAN,  
Judge. [120]

[Endorsed]: No. 3561. In the District Court of the United States for the Western District of Washington, Northern Division. Lloyd's Plate Glass Insurance Co., a Corporation, Plaintiff, vs. The City of Seattle, a Municipal Corporation, Defendant. Citation. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Jan. 10, 1918. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

Service of the within citation by delivery of a copy to the undersigned is hereby acknowledged this 8 day of January, 1918.

HUGHES, McMICKEN, RAMSEY & RUPP,  
Of Attorneys for Plaintiff. [121]

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[Endorsed]: No. 3112. United States Circuit Court of Appeals for the Ninth Circuit. City of Seattle, a Municipal Corporation, Appellant, vs. Lloyds Plate Glass Insurance Company, a Corpora-

tion, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed January 19, 1918.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.



